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Mr Dana
Mr B R Curtis

Mr. Justice Clifford

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SUPREME COURT OF THE UNITED STATES.

No. ~~12~~. 66.

HENRY B. CROMWELL et al., owners of the Steamboat "Western-port," &c., App'ts,

vs.

THE BARQUE "ISLAND CITY" and CARGO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

GIDEON, Printer.

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Mr Justice Grier

SUPREME COURT OF THE UNITED STATES.

No. 143.

HENRY B. CROMWELL et al., owners of the Steamboat "Westernport," &c., App'ts,

vs.

THE BARQUE "ISLAND CITY" and CARGO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

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UNITED STATES OF AMERICA, MASSACHUSETTS DISTRICT, *ss.*

May Term, A. D. 1859.

At a Circuit Court of the United States for the First Circuit, begun and holden at Boston within and for the District of Massachusetts, on Monday, the sixteenth day of May, in the year of our Lord one thousand eight hundred and fifty-nine (the fifteenth being Sunday), before the Honorable Nathan Clifford, Associate Justice, &c., Henry B. Cromwell, William Cromwell, and Joseph Noble, owners of the American steamboat "Westernport," of New York, and P. S. Berry, master of said steamboat, for themselves and the officers and crew of said steamboat, and others entitled to salvage, against the bark Island City, of Boston, her tackle, apparel, furniture, and cargo, and against all persons intervening for their interest therein.

This cause was entered in this court on the fifteenth day of October, A. D. 1857, and the copy of the record thereof in the District Court, is as follows, viz:—

United States of America, District of Massachusetts, *ss.*

At a special District Court of the United States, holden at Boston within and for the District of Massachusetts, on Wednesday the sixteenth day of September, in the year of our Lord 1857.

Before the honorable PELEG SPRAGUE, Judge.

HENRY B. CROMWELL et als., Libellants,
vs.
BARK "ISLAND CITY" AND CARGO.

The libel in this case was filed in court on the tenth day of February, A. D. 1857, and is as follows, viz:—

United States of America, District of Massachusetts, *ss.*

Term 1857.

To the Honorable Peleg Sprague, Judge of the District Court of the United States, for the District of Massachusetts.

The libel of Henry B. Cromwell and William Cromwell, of New York, and Joseph Noble, of Boston, owners of the American steamboat "Westernport," of New York, and of P. S. Berry, master of said steamboat, for themselves and the officers and crew of said steamboat, and all others entitled to salvage, against the bark "Island City," of Boston, her tackle, apparel, furniture, and cargo, and against all persons intervening for their interest therein, in the cause of salvage, civil and maritime.

And thereupon the libellants allege and propound articulately as follows:—

First. That on the thirtieth day of January last past, the said steamboat "Westernport" being on a voyage from the port of New York to the port of Boston, and being a vessel of great value, to wit, fifty thousand dollars, and plying regularly between the ports of New York and Boston, for the purpose of transporting passengers and cargo, and having on board on her said passage a valuable cargo, to wit, the value of fifty thousand dollars, discovered a bark dismasted and apparently deserted. The said steamboat then changed her course and bore down for said bark, and after much exposure, danger, and labor, the crew of said steamboat boarded said bark, which proved to be the American bark "Island City," of Boston, totally dismasted, rudder gone, and entirely abandoned by her captain and crew; that said bark had a full cargo of cotton and hides, and the value of said bark and cargo was eighty thousand dollars; that said bark when so boarded was in Nantucket Shoals, Great Point Light bearing west by north, about eight miles distant; that said bark when so boarded had out an eight hundred pound anchor, and the chain was nearly all paid out, and not weather bited or fastened in any manner on board said bark; that the wind was blowing strong from the northeast, and a very heavy sea running; that said chain was constantly rendering round the windlass, and must soon have all paid out; that after about twenty-four hours' hard labor in a severe storm, with great exposure and danger to the "Westernport," and her cargo and crew, they reached the port of Hyannis, and placed the said bark "Island City" with her cargo on board, in safety alongside the wharf; the said "Westernport" suffered great damage in the injury done to her in coming in collision with said bark, by the violence of the sea, in detention and expenses incurred, to wit, the sum of four thousand dollars, beside other great injuries and damages.

Second. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libellants pray that process in due form of law according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said bark "Island City," her tackle, apparel and furniture and cargo, and that all persons claiming any interest therein may be cited to appear and answer all and singular the matters aforesaid, and that this honorable court will be pleased to decree to the libellants a reasonable and proper salvage; and that the said bark, her tackle, apparel, furniture and cargo, may be condemned and sold to pay said salvage, with costs, charges and expenses, and that the libellants may have such other and further relief in the premises as in law and justice they may be entitled to receive.

C. W. BISHOP, Agent for owners and others.

D. W. GOOCH, Proctor.

U. S. Circuit Court, Mass. District.

Feb. 10, 1857.

Sworn to by the said Bishop as being true according to the best of his knowledge, information and belief, before me.

H. W. FULLER, Clerk.

Thereupon by order of the Judge a warrant and monition issued, commanding the Marshal to give notice to all persons concerned that said libel had been filed and that trial would be had thereon at a Special District Court, to be holden at the United States court-house in Boston, in said District of Massachusetts, on Friday the 20th day of February, A. D. 1857, at 10 o'clock A. M. And to give said notice by advertising the same in one of the public newspapers printed at Boston, and by posting a copy of the same notice at the said court-house in Boston eight days at least before said day of trial. And to take the said bark "Island City," her tackle, apparel and furniture and cargo into his custody. And to make due return of his doings.

On which the Marshal made return, viz:—

United States of America, Mass. District, *ss.*

Boston, February 11, 1857.

Pursuant hereunto I have given notice to all persons concerned, that the libel within named has been filed, and that trial will be had thereon, by publishing the substance of the within monition in the Boston "Post," a newspaper printed in Boston in said district, and by posting up a copy of the same notice in the United States court-house in said Boston, eight days at least before the day within named for trial, and on the tenth day of said February I took

the bark "Island City," her tackle, apparel and furniture and cargo, into my custody on this warrant.

WATSON FREEMAN, U. S. Marshal.

And on the tenth of February, A. D. 1857, the following consent of libellants to the delivery of property was filed in court, viz:—

Boston, Feb. 13, 1856. [7]

I hereby consent that the "Island City," and cargo be delivered up to owners, upon their stipulating in the sum of seventy thousand dollars, which sum is not to be taken as the true value thereof—with the following persons as sureties: Francis Bacon, J. W. Balch, Joseph H. Adams, Thomas W. Peirce of firm "Peirce & Bacon," principal. D. W. GOOCH, for Libellants.

Then personally appeared the said Thomas W. Peirce, of the firm of "Peirce & Bacon," part owners of said bark and consignees of the cargo thereof, and produced for sureties the said Francis Bacon, Joseph W. Balch and Joseph H. Adams, all doing business in Boston, and Caleb Curtis. And the said Peirce, Bacon, Balch & Adams and Curtis, submitting themselves to the jurisdiction of this court, bound themselves, their heirs, executors and administrators, jointly and severally, in the sum of five hundred dollars unto the said libellants, that the said Peirce should pay all costs and expenses which should be awarded against him in this suit, upon the final adjudication thereof, or by any interlocutory order.

And on said tenth day of February, A. D. 1857, the following claim was filed in court, viz:—

United States District Court, District of Massachusetts.

Feb. 10, 1856. [7]

HENRY B. CROMWELL et als.
vs.
BARK "ISLAND CITY."

And now comes Thomas W. Peirce, of Boston in said district, and declares that he, with Andrew Peirce, Jr., and George Bacon, merchants and copartners, under the firm of "Peirce & Bacon," and the heirs of Samuel C. Grant, are the true and bona fide owners of said bark "Island City," and that no other person is owner thereof, and said Peirce & Bacon are consignees of her cargo, and that he is duly authorized by said other owners and consignees to put in a claim to said vessel and cargo in their behalf in this suit, wherefore he claims the same, and prays that said vessel and cargo may be delivered to him upon his giving stipulation with sureties according to law. T. W. PEIRCE.

Feb. 10, 1857.

Sworn to by said Peirce before me.

S. E. SPRAGUE, Clerk.

Then again personally appeared the said Thomas W. Peirce, and produced for sureties the aforenamed Francis Bacon, Joseph W. Balch and Joseph H. Adams, all doing business in Boston, and Caleb Curtis.

And the said Peirce, Bacon, Balch and Adams, and Curtis, submitting themselves to the jurisdiction of this court, bound themselves, their heirs, executors and administrators jointly and severally in the sum of seventy thousand dollars, unto the said libellants, that the said Peirce should abide by all orders and decrees, interlocutory or final, of the court, and should pay the amount of the final decree of the court, and all sums of money that he should be ordered to pay by the final decree of the court, whether it be in this or any Appellate Court.

Thereupon by order of the Judge a warrant issued directing the Marshal to cause said bark and cargo to be delivered to the claimant aforesaid.

On which the Marshal made return, viz:—

United States of America, Mass. District, *ss.*

Boston, Feb. 10, 1857.

Pursuant to the within precept I have caused the within named bark "Island City" and cargo to be delivered to the claimant within named, and have taken his receipt for the same as under.

F. WARREN, Dep. Marshal.

Boston, February 10, 1857.

Received from W. Freeman, Marshal in and for the District of Massachusetts, the within named bark "Island City" and cargo, in the same state as when seized and detained by his deputy.

T. W. PEIRCE,
For himself and other owners.

And on the 4th day of March, A. D. 1857, the following answer was filed in the Clerk's office:—

IN ADMIRALTY.

The answer of Thomas W. Peirce, Andrew Peirce, Jr., and George Bacon, for themselves as part owners, and as agents of the other owners and claimants of the bark "Island City," and consignees of her cargo, to the libel of Henry B. Cromwell and William Cromwell of New York, and Joseph Noble of Boston, owners of the American steamboat "Westernport" of New York, and of P. S. Berry, master of said steamboat, and all others claiming salvage against the bark "Island City" and cargo.

And now come the said Peirce and Bacon, owners, agents and consignees as aforesaid, and for answer unto the libel of Henry B. Cromwell and others aforesaid, against the said bark and her cargo, allege and propound as follows, to wit:—

First. That they are not informed and do not believe it to be true, that the "Westernport" on the thirtieth day of January last was on a voyage from the port of New York to the port of Boston, as alleged in the first article of said libel, and whether she was of the value of fifty thousand dollars and regularly plying between New York and Boston, as therein alleged, these respondents do not know, and pray that the libellants make due proof thereof. And the respondents are informed and believe that said steamer had on board a cargo, but of what value they are not informed, nor do they deem it material, as her policies of insurance and bills of lading permitted her to tow or assist vessels in want of assistance.

These respondents further allege and propound that they are informed, that on said thirtieth day of January, the said steamer discovered a bark dismasted, but whether she then changed her course and bore down for said bark, they are ignorant, but are informed that the crew of said steamer boarded her, and that she proved to be the said "Island City;" but these respondents upon information and belief deny that the boarding of said bark was, or if it was, that it need have been a work of much exposure, danger and labor, as alleged in the first article of said libel.

But these respondents do not admit that said bark was apparently deserted; as she was carefully anchored in a place of safe anchorage, in sight of Monumoy, and in a manner that would indicate the intention of her crew to return to her, all their clothes and effects being left on board and nothing removed.

These respondents further allege and propound, that it is true that said bark was then totally dismasted and had lost her rudder; but they deny that she was entirely abandoned by her captain and crew; and on the contrary they allege and propound that the master and crew of said bark, after carefully anchoring said bark, and making fast the end of her chain, left said bark in the steamer "R. B. Forbes," which had been sent to her aid, and which had then been towing her for the better part of three days, for a temporary purpose only; viz., of going to Provincetown and procuring a necessary supply of coal for said "Forbes," and with the hope of recovery of the said bark and cargo, and the expectation and intention openly declared at the time by the officers both of said steamer "Forbes" and said bark, to return forthwith and take said bark into port; and with such intention they left all their clothing on board of said bark and removed nothing; that after reaching Provincetown, as soon as they could procure coal, which occupied them during the day, they attempted to carry into effect their said intention, and at four A. M. of Wednesday, the twenty-eight day of January last past, the said "Forbes" started from Provincetown for the bark, with all the crew of the bark on board, except two, who were left ashore sick; but owing to the inferior quality of the coal, and the rapidity with which it was consumed, it was found after several hours' trial, that it would

not suffice to enable the "Forbes" to reach the bark and tow her back to Provincetown.

These respondents further allege and propound, that it was then determined to put back into Provincetown for a supply of suitable coal, which had been previously ordered to Provincetown for the use of said steamer "Forbes;" that said "Forbes" lay all day Thursday the 29th day of said January, waiting for said coal; that on Friday the 30th of said January, the said coal arrived, and the said "Forbes" with her crew and that of the bark, were occupied in loading the same on board till midnight, when she again started for the bark with all the officers and all the crew thereof, save the two who were sick, with the intention to tow her into port, but on arrival at the place where said bark had been anchored, said "Forbes" was unable to find her, after searching all day; and on the afternoon of Saturday, the 31st of said January, she put into Monumoy, and there inquired and learned that said bark had been taken into Hyannis by a steamer, which proved to be the "Westernport."

These respondents further admit, that said bark had a full cargo of cotton and hides, the value of which and of said bark these respondents believe to be about seventy thousand dollars, and not eighty thousand dollars, as alleged in the first article of said libel.

These respondents further allege and propound, that they do not admit the position of said bark, when boarded by the libellants, to have been in Nantucket Shoals, Great Point bearing west by north about eight miles distant, as alleged in said libel, but they allege and propound on the contrary, that Great Point Light bore due west, and was distant but about five miles.

These respondents further allege and propound, that said bark when so boarded had on an eight hundred pound anchor and a chain of about one hundred and twenty fathoms paid out; but they deny that said chain was not weather bited or fastened in any manner on board said bark, as is wrongly asserted in said libel. On the contrary, they allege and propound that the end of said chain was very securely fastened around the stump of the foremast or foremast bits, a half hitch taken, and the end stopped back with four or five fathoms of new Manilla ratting stuff; and as further proof that said bark was safely anchored, they allege that it took the said steamer "Westernport" some five hours or more to get up the anchor of said bark.

These respondents further allege and propound, that they are informed and believe that the wind blew from the northeast, and that there was a moderate common swell on, but deny that the wind blew so strong, or that the sea ran very heavily, or that said chain was constantly rendering round the windless and must soon have all paid out, as is wrongly alleged in the first article of said libel.

These respondents further allege and propound, that after some hours, but how many they do not know, the said "Westernport" reached the port of Hyannis with said bark in safety; but they deny

that the service was accompanied with any unusually hard labor, or with any great exposure or danger to said steamer "Westernport" and her cargo; or that the service was performed in a severe storm, as is wrongly alleged in the first article of said libel.

These respondents further allege and propound, that they were informed by the master of the said steamer "Westernport" that she had suffered some damage to the extent of about four hundred dollars from collision with said bark, but whether from want of care or otherwise they do not know, but pray, that if material, the libellants may make due proof thereof. And they admit that said "Westernport" must have incurred some expenses during the detention, which might have been lessened, however, by her officers, but they are ignorant of all the other injuries and damages alleged, of all which they pray the libellants may make due proof.

Second. These respondents further allege and propound, that the said steamer "Westernport" had no right to take the said bark from the place where the "Forbes" had anchored her, and only left her to get coal, as was before then publicly reported in the newspapers, and was well known to the officers of the "Westernport," and where she was not derelict, and that such taking of said bark and carrying her into port, as alleged in said libel, does not entitle the libellants to salvage as claimed in said libel, and that it prevented the "Forbes," which returned to said anchorage at eight A. M. of Saturday, only a few hours after said "Westernport" had taken said bark therefrom, from taking said "Island City" into port, as intended, and subjected these respondents to much unnecessary detention, expense and damage.

Third. These respondents further allege and propound, that when the "Forbes" arrived at Hyannis and found the said bark anchored and in charge of the "Westernport," Captain Morris, of the "Forbes," informed the master of the "Westernport" that he had an anchor which he had purchased for the "Island City," that he acted for her owners, and wished to put the same aboard of her, but the master of said "Westernport" replied, that he would suffer no anchor to be put aboard that craft, and that he could take care of her himself as well as any body; that soon after he attempted to get the said bark in to the wharf, and got her aground in so doing, but afterwards succeeded in getting her in to the wharf where she lay aground most of the time, except for about two hours of the tide, and was there exposed to injury and damaged by the aforesaid acts of the master of the "Westernport."

Fourth. These respondents further allege and propound, that if the alleged acts and services of the libellants are proved, and in the judgment of this honorable court are such as would entitle the libellants under ordinary circumstances to salvage or other compensation therefor, the entire shares or portions thereof to which the officers and crew of said steamer would otherwise be entitled are justly forfeited by the embezzlement, theft, wanton destruction, and

gross carelessness of the said officers and crew, as set forth in the next two succeeding articles of this answer.

Fifth. These respondents further allege and propound, that they are informed and believe that the mate and first engineer of the said steamer "Westernport" were placed in charge of said bark, and they are further informed and believe that said mate and engineer first went by themselves into the cabin and forecastle thereof, and broke open what they saw fit and took what they thought worth taking, and then allowed the crew to help themselves, as stated by two of the crew of said "Westernport," who were on board the bark at the time.

That the master and crew of said bark, when they first went aboard thereof in Hyannis, and while she was in charge of said mate and engineer, went respectively to the cabin and forecastle thereof, and found every one of the trunks and chests of the captain, mates, and crew of said bark broken open and some of the chests split and the locks broken; and the lashings of one trunk which contained pecan nuts and other articles which were all on freight, were cut, and the trunk had been opened and some of the contents thereof taken away and never returned.

That in the trunk of the captain of the bark, in his state-room, there was left by him a sum of forty-three dollars in gold, wrapped in a newspaper and placed in his care by one of his crew, named Patten, and also a sum of about twenty dollars in gold and two or three dollars in silver in a purse, belonging to the master of the bark, all which money had been taken therefrom; that all the clothes and instruments of the master of said bark were taken from his said trunk and his papers overhauled.

That all the clothes of the crew had been taken from their chests, and from the bags of three of them.

That before the said master and crew were permitted to go aboard said bark, the master informed the said mate and the persons on board that they were the crew of said vessel, and he supposed they might come aboard as individuals to get their own property; and the reply was "yes;" but nothing was then said as to any of the articles being taken away, nor was anything said relative thereto until after the said master on coming from the cabin, inquired concerning the same. That then the mate informed him that he had opened his trunk and had taken care of the clothes and instruments of the master, and had them aboard the steamer, and would return them; but said nothing of any money.

That thereupon the said master informed said mate that there was about sixty-five dollars in his trunk, to which the mate replied, he would bring the money back; and he some time after took a boat and went to the steamer and returned and handed the master of said bark a quantity of money in a paper like that in which said Patten's money had been wrapped. That on examination there had been

that the service was accompanied with any unusually hard labor, or with any great exposure or danger to said steamer "Westernport" and her cargo; or that the service was performed in a severe storm, as is wrongly alleged in the first article of said libel.

These respondents further allege and propound, that they were informed by the master of the said steamer "Westernport" that she had suffered some damage to the extent of about four hundred dollars from collision with said bark, but whether from want of care or otherwise they do not know, but pray, that if material, the libellants may make due proof thereof. And they admit that said "Westernport" must have incurred some expenses during the detention, which might have been lessened, however, by her officers, but they are ignorant of all the other injuries and damages alleged, of all which they pray the libellants may make due proof.

Second. These respondents further allege and propound, that the said steamer "Westernport" had no right to take the said bark from the place where the "Forbes" had anchored her, and only left her to get coal, as was before then publicly reported in the newspapers, and was well known to the officers of the "Westernport," and where she was not derelict, and that such taking of said bark and carrying her into port, as alleged in said libel, does not entitle the libellants to salvage as claimed in said libel, and that it prevented the "Forbes," which returned to said anchorage at eight A. M. of Saturday, only a few hours after said "Westernport" had taken said bark therefrom, from taking said "Island City" into port, as intended, and subjected these respondents to much unnecessary detention, expense and damage.

Third. These respondents further allege and propound, that when the "Forbes" arrived at Hyannis and found the said bark anchored and in charge of the "Westernport," Captain Morris, of the "Forbes," informed the master of the "Westernport" that he had an anchor which he had purchased for the "Island City," that he acted for her owners, and wished to put the same aboard of her, but the master of said "Westernport" replied, that he would suffer no anchor to be put aboard that craft, and that he could take care of her himself as well as any body; that soon after he attempted to get the said bark in to the wharf, and got her aground in so doing, but afterwards succeeded in getting her in to the wharf where she lay aground most of the time, except for about two hours of the tide, and was there exposed to injury and damaged by the aforesaid acts of the master of the "Westernport."

Fourth. These respondents further allege and propound, that if the alleged acts and services of the libellants are proved, and in the judgment of this honorable court are such as would entitle the libellants under ordinary circumstances to salvage or other compensation therefor, the entire shares or portions thereof to which the officers and crew of said steamer would otherwise be entitled are justly forfeited by the embezzlement, theft, wanton destruction, and

gross carelessness of the said officers and crew, as set forth in the next two succeeding articles of this answer.

Fifth. These respondents further allege and propound, that they are informed and believe that the mate and first engineer of the said steamer "Westernport" were placed in charge of said bark, and they are further informed and believe that said mate and engineer first went by themselves into the cabin and forecastle thereof, and broke open what they saw fit and took what they thought worth taking, and then allowed the crew to help themselves, as stated by two of the crew of said "Westernport," who were on board the bark at the time.

That the master and crew of said bark, when they first went aboard thereof in Hyannis, and while she was in charge of said mate and engineer, went respectively to the cabin and forecastle thereof, and found every one of the trunks and chests of the captain, mates, and crew of said bark broken open and some of the chests split and the locks, broken; and the lashings of one trunk which contained pecan nuts and other articles which were all on freight, were cut, and the trunk had been opened and some of the contents thereof taken away and never returned.

That in the trunk of the captain of the bark, in his state-room, there was left by him a sum of forty-three dollars in gold, wrapped in a newspaper and placed in his care by one of his crew, named Patten, and also a sum of about twenty dollars in gold and two or three dollars in silver in a purse, belonging to the master of the bark, all which money had been taken therefrom; that all the clothes and instruments of the master of said bark were taken from his said trunk and his papers overhauled.

That all the clothes of the crew had been taken from their chests, and from the bags of three of them.

That before the said master and crew were permitted to go aboard said bark, the master informed the said mate and the persons on board that they were the crew of said vessel, and he supposed they might come aboard as individuals to get their own property; and the reply was "yes;" but nothing was then said as to any of the articles being taken away, nor was anything said relative thereto until after the said master on coming from the cabin, inquired concerning the same. That then the mate informed him that he had opened his trunk and had taken care of the clothes and instruments of the master, and had them aboard the steamer, and would return them; but said nothing of any money.

That thereupon the said master informed said mate that there was about sixty-five dollars in his trunk, to which the mate replied, he would bring the money back; and he some time after took a boat and went to the steamer and returned and handed the master of said bark a quantity of money in a paper like that in which said Patten's money had been wrapped. That on examination there had been

taken from said parcel the sum of seventeen dollars and a half, which was never returned.

That the purse and amount therein belonging to the captain of the bark was never returned.

That a dozen and one-half of woollen and cotton socks, and a pair of woollen drawers and a razor, also taken from the trunk belonging to the master of said bark, were never returned.

That a dozen plated spoons and a dozen soup-plates were taken from said bark, which were never returned.

That after complaint being made by the mates and crew of the bark respecting their clothing and property which had been so taken, to the mate of said steamer "Westernport," and to the engineer and two of the crew thereof, certain of the articles which had been taken were returned on board, in parcels all mixed together; but a large part of the articles belonging to the mates and crew, and of great value to them, were never returned; and one man lost all he had and got nothing back; for the particulars of all which, these respondents crave leave to refer to the depositions and other proofs to be exhibited in this cause.

That all the articles which were returned as aforesaid were brought from on board the said steamer.

Sixth. These respondents on their information and belief, allege and propound, that the property of the officers and crew of said bark was wantonly injured and destroyed, fraudulently broken open, embezzled and plundered by some of the officers and crew of said steamer "Westernport," and that some of the property shipped on board of said bark on freight was embezzled, plundered, and unlawfully appropriated by the same parties to their own use.

Seventh. These respondents further allege and propound, that the master and the other officers of said steamer "Westernport" were guilty of gross carelessness and negligence in the keeping of the property on board the said bark of which they took possession as aforesaid, and in not restoring it uninjured and entire to its owner; and in suffering any person or persons to break open and injure the trunks, chests and bags aforesaid, and to take the contents and carry the same on board the said steamer "Westernport," and keep the same there, and to appropriate the same, and by such carelessness and negligence they have justly forfeited all claim, if any they ever had, to salvage or other compensation.

And that such of the crew of said steamer "Westernport" as were not on board the bark, were privy to the facts, that clothing and other property belonging to the crew for the bark, or taken from on board thereof, was brought on board the steamer "Westernport," and was there kept by the crew for their own use, and did not disclose the facts, and are thereby implicated in the plunder and embezzlement aforesaid, and have thereby forfeited all claim to salvage or compensation.

Eighth. These respondents further allege and propound, that prior

to the filing of said libel, the master and crew of the schooner "Kensington" filed their libel against said bark and cargo in this honorable court, claiming salvage for alleged services rendered said bark while dismasted as aforesaid, and subsequently the owners of said schooner applied by petition to share the salvage, if any, decreed therein.

That the owners of the said steamer "R. B. Forbes" have also filed their libel against said bark and cargo in this honorable court, claiming an extra liberal compensation for alleged services rendered by the said "Forbes" and expenses incurred for the aid of said bark while dismasted as aforesaid.

And the respondents allege and propound, that these several libels relate to the same subject matter, that they are liable in "*in rem*," and claim salvage or other compensation for alleged services rendered said bark while dismasted, and at and about the same time, and that the claims are conflicting, and each may have more or less relation to and effect upon the others, and on the compensation, if any, which ought to be decreed to them severally.

Wherefore these respondents pray that the said several libels may be heard together, and they crave leave to refer to each of the same, and the answers thereto, and to the proofs exhibited therein.

That all and singular the premises are true. Wherefore the respondents pray, that this honorable court would pronounce on the libel aforesaid and against the claim for salvage, and otherwise right and justice to administer in the premises.

T. W. PEIRCE.
ANDREW PEIRCE, JR.
GEORGE BACON.

WM. DEHON, Proctor.

U. S. District Court, Mass. District.

March 4th, 1857.

Then personally appeared the beforenamed Thomas W. Peirce, Andrew Peirce, Jr., and George Bacon, and severally made oath to the truth of the above answer, by them respectively signed, before me. S. E. SPRAGUE, Clerk.

This libel was filed and entered at a special district court, held on the tenth day of February, A. D. 1857, and thence was continued from time to time to this sixteenth day of September, A. D. 1857, when the following application of libellants that the cause be certified to the Circuit Court, was filed in court, viz:—

District Court, United States, Mass. District.

H. B. CROMWELL et als.
vs.
BARK "ISLAND CITY" and CARGO.

And now it appearing by the record in the above cause, that his

Honor the District Judge is concerned in interest, so as to render it improper for him, in his opinion, to sit on the trial of this cause, the libellants pray that the same may be certified to the next Circuit Court for said District.

D. W. GOOCH, Proctor for Libellants.

It is thereupon ordered by the court, on application of the libellants, that the proceedings in this suit, together with an authenticated copy of this order, be certified to the next Circuit Court of this district, the judge of this court being so concerned in interest as to render it improper for him, in his opinion, to sit on the trial of the suit.

I, S. E. Sprague, clerk of the District Court of the United States for the District of Massachusetts, hereby certify that the foregoing is a transcript of the record of the said District Court in the said cause.

In witness whereof, I have hereunto subscribed my name and affixed the seal of the said court, this day of September, A. D. 1857.

Attest. S. E. SPRAGUE, Clerk.

The following testimony in behalf of the libellants, was used at the hearing of said cause in this Circuit Court.

Deposition of Alexander Scudder, taken in behalf of officers and crew of the Westernport, March, 28, 1857.

1st Interrogatory. State your age, residence, and occupation.

Ans. I am thirty-five; live at Taunton, Massachusetts; I am a master mariner.

2d Int. For how many years have you been a master mariner, and what description of vessels have you commanded?

Ans. I have been master seventeen years—of schooners until the last seven years: during that time of steamers.

3d Int. Where were you, and in what business engaged, on the thirtieth day of January last?

Ans. I was on board the steamer Henry B. Beach, bound from New York to Boston. I was on board as master and pilot.

4th Int. On what day did you leave New York, and when did you reach Boston?

Ans. I left New York on the 22d January, and arrived at Boston on the 31st.

5th Int. Do you know the steamer Westernport? If yea, state where she was, and to what port bound, when you left New York.

Ans. I know her. She left New York the day before I did, bound to Boston.

6th Int. State what business the Westernport was engaged in, if you know.

Ans. The freighting business.

7th Int. Do you know the value of the Westernport? If yea, state the same, and your means of knowledge of her value.

Ans. I don't know her exact value. I should say she was worth forty thousand dollars. My means of knowledge is that I know her to be a good boat of 460 tons or thereabout, and that she has a new engine and boiler, which I suppose didn't cost less than sixteen thousand dollars.

8th Int. What cargo did the Westernport have on board when she left New York?

Ans. She had a general cargo—I couldn't say exactly what: wet and dry goods.

9th Int. Did you see her after you left New York, and before you reached Boston? If yea, state when and where.

Ans. The first time I saw her after leaving New York was in Tarpaulin Cove, on Friday night—the next evening after I left New York. She left us there. I saw her again on Friday, a week afterwards, Jan. 30th, off Nantucket Light—fast to the Island City with a hawser—it was then forty minutes past one o'clock P. M. She bore then east by south from Nantucket Great Point Light, about five to eight miles distant from the Light. I passed her within hailing distance; I went as near as I dared to on account of the sea.

10th Int. How near did you go to the Westernport? Did you speak to those on board?

Ans. I went within hailing distance—within a hundred yards, I should think. I spoke to those on board.

11th Int. Describe the situation and condition of the Island City. Was she in a dangerous situation, or otherwise?

Ans. I think she was in a dangerous situation. She laid seaboard—liable to all winds from the east and south, and in fact from almost all quarters except southwest. She lay with one anchor down, as I saw; she had no spars, bowsprit, or rudder—with the wind blowing strong from north-northeast—right from sea; she was surrounded by shoals; she laid at about the point marked "C" on the chart referred to in the deposition of Asa Stevens. (The chart above mentioned was here shown to witness.)

12th Int. Were the shoals of which you speak near to the place where the Island City was, or otherwise; and what shoals do you refer to?

Ans. They were near. I refer to the Great Round Shoal and the Little Round Shoal.

13th Int. Was the Island City in such a condition and situation when you saw her, that any master mariner acquainted with the duties of his office, and having the power so to do, would have taken her to some port for safety?

Ans. She was in such a situation.

14th Int. What did you consider her situation?

Ans. I considered her situation to be a dangerous situation.

15th Int. If the Island City had only one anchor of eight hun-

dred pounds, when you saw her, what were the dangers to which she was exposed?

Ans. She was exposed to any winds, and liable to go ashore.

16th Int. What was the condition of the sea at this time?

Ans. It was very rugged at that time—a heavy sea.

17th Int. What was the state of the wind and weather?

Ans. The wind was blowing fresh from north-northeast; the weather was cloudy.

18th Int. Describe particularly the state of the wind and weather for the next twenty-four hours after you left the Island City.

Ans. The wind varied from north-northeast to as far as east by south. At twelve o'clock that night the wind was northeast; at two o'clock next morning it was east-northeast; at four o'clock, the wind was about east—with snow. The wind continued to increase, going round towards east-southeast—and when I passed Boston Light, between seven and eight o'clock Saturday morning, it was blowing very fresh from east-southeast, and snowing very thick.

19 Int. When did it begin to snow?

Ans. I think it began to snow about four o'clock on Saturday morning?

20th Int. To what port could the Island City be most easily and safely taken, from the place where you saw her, by the Westernport?

Ans. To the port of Hyannis.

21st Int. Are you acquainted with the harbor of Hyannis?

Ans. I am.

22d Int. [Objected to for form and substance.] Would, or not, the Westernport and her men necessarily incur hardship and danger in taking the Island City from the place where you saw her to Hyannis,—the condition of the wind and weather being as they were?

Ans. They would.

23d Int. [Objected to for form and substance.] If the Island City was held by an anchor of eight hundred pounds, surrounded by ice, in the situation in which you saw her, and with a good supply of provisions on board, could her officers and crew have remained on board her for several days with safety? If not, state why not.

Ans. They could not, because they had not a suitable anchor to take care of her. An eight hundred pound anchor is nothing more than a stream anchor, for a ship of that kind.

24th Int. If the Island City had not been taken by the Westernport or some other vessel, how long, in your opinion, would she have remained where you saw her—the wind and weather being as you have described them?

Ans. I should not suppose she would have remained more than twelve or fourteen hours.

25th Int. What, in your opinion, would have become of her?

Ans. She would have gone ashore on Nantucket.

Cross Interrogatories, propounded on behalf of Joseph H. Adams, President, &c.

1st Cross Interrogatory. By whom is said steamer, Henry B. Beach, owned?

Ans. By persons in Connecticut and Philadelphia. I don't know that I can tell exactly. Capt. John Saunders is, I believe, the principal owner. He represents, I believe, one-half of her. He is now in command of her. Baker & Co., of Philadelphia, own, I think, a quarter of her. I don't know who the other owners are.

2d Cross Int. How were the weather, wind, and sea from the time you left New York, Jan. twenty-second, until you first saw the Westernport?

Ans. It was very rugged, and blowing a gale of wind all the time, from about west and west by north.

3d Cross Int. Did you not touch at intermediate places on your passage from New York to Boston? If so, where?

Ans. Only at Tarpaulin Cove.

4th Cross Int. How long did you remain in Tarpaulin Cove?

Ans. We arrived there on Friday afternoon; and we left there once, and came back again when we got off the south side of Nantucket. I think we left on Tuesday, that time, and came back next day. We left there finally on Friday morning, January thirtieth.

5th Cross Int. Did you remain in Tarpaulin Cove all that time, except the trip out and back, which you have mentioned in your last answer?

Ans. We did.

6th Cross Int. You say you first saw the Westernport, after leaving New York, at Tarpaulin Cove—how long did she remain there?

Ans. She remained there all the time we did. We went out, off the south side of Nantucket, together, came back together, and started both on the same day for Boston, on the thirtieth January. She went out just before we did on that day.

7th Cross Int. How long before?

Ans. About an hour; perhaps not so long; half an hour to an hour.

8th Cross Int. Was she in sight when you started?

Ans. She was.

9th Cross Int. How far from you?

Ans. I should think five miles.

10th Cross Int. At what time in the day did you start?

Ans. I think, between seven and eight o'clock in the morning.

11th Cross Int. How long did you keep in sight of the Westernport?

Ans. All the time, until she took hold of the Island City.

12th Cross Int. Did you not, during your stay at Tarpaulin Cove, or before leaving there on Friday, hear that the Forbes had had the Island City in tow?

Ans. We did. We heard of her coming round to Hyannis after her.

13th Cross Int. Did you not know that she had been towed from Hyannis to her then anchorage, by the Forbes?

Ans. We did not know that.

14th Cross Int. Did you not suppose she had been towed there by the Forbes, or by some other steamer?

Ans. Yes, I supposed she had.

15th Cross Int. When you saw the Westernport with a hawser fast to the Island City, were you not bound to Boston?

Ans. I was.

16th Cross Int. Were you not then pursuing your voyage thither?

Ans. I was.

17th Cross Int. What steam had you on at the time?

Ans. I should judge about twenty-five pounds; I can't say exactly.

18th Cross Int. What was your rate of speed?

Ans. About eight miles an hour.

19th Cross Int. Did you not suppose that the steamer which towed the Island City to her then anchorage, intended to return for her?

Ans. I couldn't say as to that, whether I supposed she would or not; I supposed she left her there because she couldn't take care of her.

20th Cross Int. Why did you suppose so?

Ans. Because there were no men on board to take care of her.

21st Cross Int. Why, then, did you not take her in tow yourself?

Ans. Because we didn't get there in time.

22d Cross Int. Could you, at your distance and rate of speed, tell clearly what was the state of things on board?

Ans. We could.

23d Cross Int. State, then, how said vessel was anchored.

Ans. She was anchored with only one anchor down, and one chain out.

24th Cross Int. How was said chain secured?

Ans. It was secured to the windlass.

25th Cross Int. If, on arriving at said vessel, you had found the ship's glasses, barometers, and other instruments, in their places—men's clothes remaining, the ship anchored, and with the knowledge or belief that she had been towed to that place and anchored there by a steamer—should you not have inferred that said steamer intended to return?

Ans. I might infer that she intended to return. I should not infer that she was in a safe place, and shouldn't leave her there. I should infer that the steamer calculated to return if she was safe herself.

26th Cross Int. Do you know the weight of the anchor which the Island City had out?

Ans. I do not.

27th Cross Int. Do you know what chain she had out?

Ans. I do not.

28th Cross Int. How can you say, then, that the Island City had not a suitable anchor?

Ans. Because she had but one.

29th Cross Int. Might not that one have been a suitable one?

Ans. No, sir.

30th Cross Int. How do you know?

Ans. Because such ships are not provided with one anchor heavy enough for the safety of such a ship. They are provided with three instead. A light ship is provided with three anchors—though she only lays by one.

31st Cross Int. Might not each of those three anchors have been suitable ones?

Ans. No, sir.

32d Cross Int. A ship with three anchors, then, always carries one or more unsuitable one—does she?

Ans. She carries one spar anchor, called a stream anchor.

33d Cross Int. And is that an unsuitable one?

Ans. It is.

34th Cross Int. Which, then, do you consider the suitable ones?

Ans. The best bower, and the small anchor, which is on the port bow. Those are the two anchors they calculate to anchor by.

35th Cross Int. How do you know that the Island City had not one of these down?

Ans. I don't know.

36th Cross Int. Might she not, then, have been suitably anchored?

Ans. I should think not. She was not.

37th Cross Int. You have stated what you consider suitable anchors—and that you didn't know but that the Island City might have had one of these down—why, then, might she not have been suitably anchored?

Ans. Because she had no anchor on the other bow—and no one to let it go, if she had—so that it would not have been of any use to her.

38th Cross Int. How do you know she had no other anchor?

Ans. Because I could see that she had no anchor on the other bow, and no chain out of the hawser pipe.

39th Cross Int. Might she not have had an anchor which you did not see?

Ans. She might have had one on deck. She had none on her bow, in the proper place.

40th Cross Int. And, might not such an anchor have been put out, in case of need, if she had one?

Ans. No, not without any one to put it out.

41st Cross Int. The reason, then, why she was not, in your opinion, sufficiently anchored, was not for want of an anchor, was it?

Ans. I can't say whether she was in want of anchors or not. I knew she hadn't her anchors in the proper place for anchorage.

42d Cross Int. Might not a deficiency in weight of anchor be made up by a sufficient length of chain?

Ans. No, it could not.

ALEXANDER SCUDDER.

Deposition of Thomas A. Gardner taken before C. W. Loring, Commissioner, June 6, 1857.

1st Interrogatory. What is your name, age, place of residence, and occupation?

Ans. My name is Thomas A. Gardner; I am fifty-three; I reside at Nantucket; I am a mariner; I have been master of a vessel for a dozen or fifteen years; since 1847, I have been commissioner of wrecks on the Island; I have done other business too.

2d Int. Since 1847, have you often been engaged in assisting vessels needing assistance?

Ans. Since 1849 I have been in active business in assisting vessels.

3d Int. Were you on Nantucket during the month of January last? If so, how were you engaged from the 25th to the 30th, or about that time?

Ans. I was on Nantucket during January last. From the 25th to the 27th I was at Siasconset, coaling up the steamer New York, of Glasgow; on the 28th I was in Nantucket town, at the village; the 29th and 30th I was then at the village.

4th Int. What was the state of the weather and sea at Nantucket from the 25th to the 30th? Describe both particularly.

Ans. The 25th there was little or no sea; large bodies of ice running round the island; the weather clear; remarkably smooth. This continued up to the 27th. The evening of the 27th it looked very dirty in the southeast, and the swell began to roll in on the shore from the eastward. That night I went to town, to Nantucket village. On the 28th, 29th, and 30th, I was in town. I got ready to go to the village on the night of the 27th, and went down the next morning.

5th Int. Can you describe the state of the sea and weather after you went to the village? State what day of the week you went to the village?

Ans. On the 28th, the wind was to the eastward, with a very bad sea on the shore; the wind was light. On the 29th, the wind was still on the northern and eastward board; there was some considerable swell rolling in. On the 30th, it was rather fair weather in the forenoon; in the afternoon the wind was to the northeast, with a very bad sea on the shore. I went to the village, I think on Wednesday, the 28th.

6th Int. What was the weather on the 31st, Saturday?

Ans. On the 31st the wind was to the northeastward; snow squalls flying frequently; rainy and squally at times; blowing

fresh. I consider it was very bad weather that morning, blowing a gale of wind—moderate gale.

7th Int. Describe the state of the sea and weather on Friday afternoon and Saturday, as compared with the five preceding days.

Ans. The weather on Friday and Saturday was very rough. Previous to that, the weather and water was very smooth—remarkably—from the 25th.

8th Int. Was there much ice on Friday and Saturday? If so, describe the same, and state whether or not there was much drifting, and at what time it drifted most.

Ans. There were great quantities of ice all around the island, with the exception of the eastern and northeastern board. The Sound was full of ice from Great Point, north point of Nantucket, all along up to Tuckernuck Shoals, as far as the eye could discern northwest, with the telescope, from the tower, one hundred and fifty feet above the ocean, where I stood at the time.

9th Int. Did the body of ice you speak of change on Friday or Saturday? If so, when and how did it change?

Ans. There were large quantities of the ice went out on Friday night.

10th Int. How, and in what direction did the ice go out? Look on the chart, and point out where the ice went out.

Ans. The ice had broken away to within three miles of our bar on Saturday morning, and had all gone out of the Sound. I did not see the ice go out, but it must have gone to the eastward, as westward it was all frozen up from Tuckernuck Shoals to the island. It went out by Great Point Rip; it follows along by the Rip on the north side, takes the true tide, and goes out to the eastward, with Great Point Light bearing west. The great body of ice follows to the north of Point Rip, going east; it follows along that course till it gets to the end of the Rip; then turns to the southward and eastward, and goes over the Shoal, Great Point Light bearing west. I don't wish to be understood that every cake takes that course, but that is the direction of the principal body of ice, which makes the channel. All the ice in the Sound, so far as we could see, went out the same way; but we could not see far. When I state I could not see far, it was Saturday morning; there were snow squalls.

11th Int. Between what hours did this ice go out, and on what day?

Ans. It would be rather difficult for me to tell what hours it went out. It was undoubtedly on Friday night, because it was there on Friday.

12th Int. Look at point marked "C" on the chart. Please to state what quantity of ice, in your judgment, passed that point between Friday at sunset and Saturday morning.

Ans. I should enumerate that by thousands of acres.

13th Int. Suppose a sail vessel of about 500 tons to have been

lying at point "C" on Friday night, with 100 fathoms of chain out, and an 800 pound anchor only, with masts and rudder gone, and deserted by her crew, please to state whether she was in peril, in your judgment, and in what degree of peril?

Ans. I should think she was in great peril.

14th Int. Please to state in what her peril consisted, and the degree of it.

Ans. In the first place, she was in danger of being carried away by the ice, owing to a very bad swell running. I think there was very great danger in the ice packed in around her, and her rising and falling with the sea, of her parting the chain, or tripping the anchor; and if she had done either of those things, she would either have gone to sea or gone ashore, or on the shoals.

15th Int. If she had gone upon the shoals that night, what would have been the result?

Ans. I should think that it would come as nigh to a total loss as anything I can imagine.

16th Int. Do you mean an actual or a constructive total loss?

Ans. I mean an actual total loss of the ship and cargo.

17th Int. What probability was there that the chain and anchor described could have held such a vessel, at such a time, under such circumstances, at point "C"?

Ans. I thought there was very little probability of their holding her. So much so, that I sent, on the 29th, two boats' crews to the head of the harbor to look out for the ship, in case she should come ashore that night. And they remained there until she was taken away by the Westernport.

18th Int. Please describe the direction and force of the wind Friday night.

Ans. On Friday night the wind was to the northward and eastward; it blew strong, and was overcast.

19th Int. If she had been driven on shore by the wind Friday night, please to point out where she would probably have struck.

Ans. I think she would have struck at the head of the harbor, anywhere from there to Sankaty Light. I mean anywhere from between the head of the harbor to Sankaty Light.

20th Int. Please to describe the state of the shore between the head of the harbor and Sankaty Light that night.

Ans. I was not there that night. The shore is a straight shore; and the surf rolled up on that shore one hundred and fifty feet higher that night than it did on the 27th of January, when I was coaling up the steamer New York, of Glasgow. I was there, and measured it the next morning. I had that measured by sundry men. I had it measured for my own convenience in the case of coaling up the steamer New York, as they might be able to give their evidence as to weather and sea in that case.

21st Int. State the condition of that shore as to ice on Friday night.

Ans. There was about an eighth of a mile of ice on that shore, the whole length of it, as reported to me by my men, whom I sent there to take care of this vessel—the Island City.

22d Int. How was it as to ice when you were there, before and after Friday night, and when were you there?

Ans. I was there on the 27th, and I was there Saturday morning, the 31st. On the 27th, there was any quantity of ice there, but very smooth. On the 21st, there was no ice there at all on that shore—none that I could see.

23d Int. What would have been the result to such a vessel, as described, deserted by her crew, if she had gone ashore, with the wind, Friday night, from point "C"?

Ans. She would have been taken, and discharged, and got off, if she didn't bilge. If she had bilged, it would have been a hard case—a total loss probably.

24th Int. What would be the probabilities of her bilging, or of other injury done to her?

Ans. I think, owing to the sea that ran on the shore at that time, it would have been impossible for her to lay there without bilging.

25th Int. When did you first see the Island City during the month of January? In how many places did you see her? Describe each particularly, and her condition as to danger or safety in each place. Where were you, and what opportunities had you to see her?

Ans. I first saw the Island City, I think, on the 19th of January, if my memory serves me; she bore north-northwest from the tower in the village of Nantucket; she was twelve miles distant, as near as I could judge; she was not in a safe place, by any means, then; she was at about cross "X" on the chart; she was all surrounded by ice; she had a flagstaff lashed to midships, and an American ensign hoisted on it, Union up; I saw her in the forenoon, and I saw her once in the afternoon, of that day. I saw her the next day in the forenoon, and on the 21st until nine o'clock. I didn't see her after that, for I saw a ship at the east end of the island, to which I went. The next time I saw her was on the 28th of January, in the forenoon, and she bore northeast, one-half east, from the tower in Nantucket, about three miles from the shore; she bore about east from Great Point Light, about five miles distant; she was laying there, tumbling about pretty smartly, and I think in a very perilous condition indeed; there was no ice of any note around her then; the water was clear. The next time I saw her was on the 29th; she was about in the same position, not much of any difference that I could see. The next time I saw her was the 30th; she was rolling and tumbling about as usual, and, if anything, a little more; I could see her better that day; the air was clearer in the forenoon; I got my dinner, and went into the tower again in the afternoon; when I got into the tower, there was a steamer hauling up around her, which I called a propeller, as she had no side wheels; I saw her go up to her stern, and by her stern; I think the propeller worked

that way an hour or an hour and a half before I could see anything on board the bark in the shape of a man; I then saw an object on the taffrail, which I called a man; he disappeared for some time, and then came back again; the steamer was still playing close to the ship; I then saw two, three, and more men after that; some time after that, I saw them all go forward, and man the windlass; while they were doing this, there were two more propellers passed down, and blowed the whistle, and passed on on their course; how the men could have got on board that ship I can't imagine; I should have thought it impossible for any men to have got on board of her unless there were some loose ropes hanging overboard; I think the ship hopped about more than any one I ever saw in my life anywhere about Nantucket; as I remarked to a gentleman in the tower, if the things were not lashed there in the cabin, they would be all Isaac and Josh (a sailor phrase we use—all up in a heap) before she was taken away; the steamer worked around her, and got fast to her, and started her not a great ways from five o'clock—it might have been a little after; after heaving her anchor up, she towed her away, stern foremost; I watched her with my glass until the steamer's pipe was nearly in a range with Great Point Light-house, and then it was so dark I couldn't see her.

26th Int. Was there or not danger of life in boarding the vessel at that time, and what degree of danger and why?

Ans. I think there was danger, great danger, in boarding the vessel at that time; I don't know how they boarded her, as I didn't see them; I first saw them on the rail; how they got there I couldn't tell; I think he must have taken very great risk in order to do it; I think there was very great danger of a man's losing his life in boarding that ship; if they boarded her in a boat, they had to take very great risk of a boat's being swamped along side of that ship, and if she was swamped, they would all be lost that was in the boat; and I can't imagine how it was possible for them to get up her sides; and I think it would be impossible unless there was some loose ropes laying over the sides or bow of the ship, or stern.

27th Int. Did the bark drift, and if so, when, where, and how much after you first saw her to the eastward of the island?

Ans. I can't say whether she drifted or not; she altered her position as to the land one-half point, but whether it was drifting or from swinging of the chain I can't say. She bore about northeast when the steamer hooked on to her.

28th Int. Were any efforts, and what, made from the island to rescue her from her peril?

Ans. There were two boats' crews I sent to the east end of the island to get on board of her if they could. There was no other efforts than these two boats' crews that went there, and found it impossible, on account of the surf and the ice on the shore. They returned to her the day the Westernport hooked on to her, and reported the same, after being there two days and one night.

22th Int. Was it, in your judgment, possible to get a boat off to her from the island, either on Thursday or Friday?

Ans. It was impossible to do it.

30th Int. Please to describe the condition of things near where she lay, as to shoals, rips, and rocks.

Ans. I know of no rocks there, but it is all shoals around there, from the fishing rip or great rip to Monomoy.

31st Int. Did or did not Point Rip afford the bark protection where she lay?

Ans. It couldn't afford her any protection. She was too wide off shore.

32d Int. Would it have afforded her protection from the ice on Friday night?

Ans. No, sir, it would not.

33d Int. Was the place where she lay a good place for anchorage? If not, why not?

Ans. It was not a good place by any means. She was exposed to the whole ocean swell, the whole Atlantic Ocean, and all winds from the south around the eastern board to west-southwest.

34th Int. How did the place where she lay, east of the island, compare with the place where you first saw her, by the Horse Shoe, in respect of safety?

Ans. Well, I think she was in a much more dangerous place there than at the Horse Shoe, if I had to insure on her.

35th Int. Please to state the reasons for your opinion.

Ans. When she lay to the foot of the shoals, she lay exposed to the whole ocean swell, if the ice blocked in around her and her chain was taut; at the rise of the sea the ship must force through the ice ahead, part the chain, or trip the anchor. If she did trip the anchor, she would walk off with it with the ice as if it were a bucket. Laying under the Horse Shoes as she did then, there is not that ocean swell there; and, therefore, she would not bring the same strain on the chain and anchor. But I do not consider that a safe place by any means, because any great quantity of ice coming down there would carry her away.

36th Int. What would be a proper sized anchor for a vessel of 550 tons?

Ans. They would want from two thousand to twenty-five hundred weight. People differ very much in the weight they use. I mean one of 2,000 pounds and one of 2,500 pounds.

37th Int. What are the limits of difference for such a vessel among judicious men?

Ans. From two to five hundred weight.

38th Int. In your judgment, did or did not the carrying along of the bark Friday afternoon save her from being carried to sea, or upon the shore, or on the shoals or rocks?

(Objected to as leading.)

that way an hour or an hour and a half before I could see anything on board the bark in the shape of a man; I then saw an object on the taffrail, which I called a man; he disappeared for some time, and then came back again; the steamer was still playing close to the ship; I then saw two, three, and more men after that; some time after that, I saw them all go forward, and man the windlass; while they were doing this, there were two more propellers passed down, and blowed the whistle, and passed on on their course; how the men could have got on board that ship I can't imagine; I should have thought it impossible for any men to have got on board of her unless there were some loose ropes hanging overboard; I think the ship hopped about more than any one I ever saw in my life anywhere about Nantucket; as I remarked to a gentleman in the tower, if the things were not lashed there in the cabin, they would be all Isaac and Josh (a sailor phrase we use—all up in a heap) before she was taken away; the steamer worked around her, and got fast to her, and started her not a great ways from five o'clock—it might have been a little after; after heaving her anchor up, she towed her away, stern foremost; I watched her with my glass until the steamer's pipe was nearly in a range with Great Point Light-house, and then it was so dark I couldn't see her.

26th Int. Was there or not danger of life in boarding the vessel at that time, and what degree of danger and why?

Ans. I think there was danger, great danger, in boarding the vessel at that time; I don't know how they boarded her, as I didn't see them; I first saw them on the rail; how they got there I couldn't tell; I think he must have taken very great risk in order to do it; I think there was very great danger of a man's losing his life in boarding that ship; if they boarded her in a boat, they had to take very great risk of a boat's being swamped along side of that ship, and if she was swamped, they would all be lost that was in the boat; and I can't imagine how it was possible for them to get up her sides; and I think it would be impossible unless there was some loose ropes laying over the sides or bow of the ship, or stern.

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37th Int. What are the limits of difference for such a vessel among judicious men?

Ans. From two to five hundred weight.

38th Int. In your judgment, did or did not the carrying along of the bark Friday afternoon save her from being carried to sea, or upon the shore, or on the shoals or rocks?

(Objected to as leading.)

Ans. That is a question which is very difficult to answer. Had she laid there and been mine, I would have given fifty per cent. to have got her out of it. I don't think she would have been found in the place where she was anchored the next day.

39th Int. Have you any interest in the Westernport, or her cargo or freight, or in the questions now in suit relating to the Island City?

Ans. None whatever, directly or indirectly.

40th Int. Did you see the Forbes when she came down Saturday, the 31st?

Ans. I did.

41st Int. At what hour was it?

Ans. It was not a great ways from 9 o'clock in the forenoon.

42d Int. What was the state of the wind and sea then?

Ans. The wind was to the northward and eastward—rainy, squally, and mist; snow squalls. There was a smart sea on; blowing a fresh, moderate gale.

43d Int. Was it or not dangerous navigation for a vessel drawing fourteen or fifteen feet, at the place where the bark lay on Friday?

Ans. I considered it so.

44th Int. For what reasons?

Ans. As they were liable to be choked up with ice and carried over the shoals, for one reason or another. When no ice runs, and it is thick weather, it is dangerous navigation anyhow.

45th Int. In thick weather or at night, why is it dangerous navigation there?

Ans. Because the tide sweeps over those shoals very fast, and it is hard telling how you carry it with the tide.

And to the following Interrogatories propounded by H. A. Scudder, Proctor for the schooner Kensington and Crew.

1st Interrogatory. You have said that when you saw the Island City at mark "X," near the Horse Shoe, on the 19th, 20th, and 21st, she was by no means safe. Will you state why?

Ans. She was not safe by any means there, because she had to encounter the whole body of the ice to the westward. Should the ice break away on the east tide to the eastward of her, the body of ice to the westward would carry the bark with it when it went down through the Sound. And in case the chains and anchor were strong enough to hold her, the ice is liable to cut a hole through her side, which I have known in many cases.

2d Int. How were the wind and weather during that time, and specially on the 21st? How was it on the 22d, if you know? Did the Island City drift away during the time you saw her there?

Ans. On the 21st the wind was between the north and northwest points; the weather was overcast a little; not strong winds. The 22d the wind sprung up from the northward and eastward; and in the afternoon it snowed some, considerable, and was stormy. The

wind blew heavy: it blew a gale from the northeast, and snowed hard. I remember I sent my men home to take care of themselves. I think she did not drift any while I saw her there. I didn't see her on the 22d.

3d Int. If she had been without spars or rudder or anchors, what would have been her condition, in your opinion, on the night of the 21st and on the 22d, if she had remained there? What peril would she have been in, much or little?

Ans. I don't think she would have been found there. I think she would have dragged away somewhere on the shoals to the leeward. I think on the night of the 22d she would have dragged away over towards Nantucket.

4th Int. When the wind breezed to the northeast on the 22d, what would have become of her? Where would it have carried her?

Ans. It would have carried her as far as the ice would have let her go: if the ice had been jammed in to leeward, she would not have gone a great ways.

5th Int. Was there, to your knowledge, any ice to the leeward of her on the 22d?

Ans. The whole Sound was full of ice.

6th Int. Did the wind from the northeast blow hard enough to move her on the 22d, if she had had no anchor ahead, in your opinion?

Ans. Yes, sir, it did.

7th Int. In what direction would it have carried her as to the Horse Shoe?

Ans. It was according to how the tide was: if the tide was running to the eastward, it would have carried her clear of it; if it was running to the westward, I think it would have carried her on to it.

8th Int. Would it have been possible, in your opinion, for the Island City to have avoided drifting on the 22d, if she had no anchor ahead?

Ans. No, sir; it would have been utterly impossible for her to have avoided it.

9th Int. When comparing the condition of the Island City at the two points "C" and "X," referred to, you take it for granted, do you not, that she was equally well anchored at each place? Now supposing the Island City to have had no anchor, and nothing but a chain ahead, on the day you last saw her near the Horse Shoe, what would you then say as to the comparative danger she was in?

Ans. Well, I should think she was in very great danger indeed, anywheres in the Vineyard Sound where she had no anchor. In making the comparison I took it for granted she was equally well anchored in both places. She was fifty per cent. more in danger at "C" than at "X." [Upon the question being explained to the witness he answers]: I didn't understand the question. I think her safer at "X" without an anchor than she was at "C" with an anchor of eight hundred weight and one hundred fathoms chain.

She was surrounded with ice at "X," and if the ice didn't go out she couldn't go out. She would move about in the Sound with the ice.

10th Int. Is there any other reason?

Ans. No other reason that I know of.

11th Int. Now if there had, in fact, been no ice about her, would it change your opinion as to her relative danger?

Ans. No, sir; she is a great deal more in danger to the eastward of Great Point than she is anywhere in Vineyard Sound.

12th Int. Is it, in your opinion, under any and all circumstances, safer to lie near the Horse Shoe without an anchor than to the eastward of Great Point with one?

Ans. That is according to how the wind and weather and ice is. If there is no wind or sea or ice, I should prefer to have her to the eastward of Nantucket, anchored with an eight hundred pound anchor.

13th Int. What was the danger, if any, to the schooner Kensington and crew, in towing the bark Island City from the Horse Shoe towards Hyannis, in the weather of Wednesday night, Jan. 21, and morning of the 22d, the bark being without a rudder, and from what did that danger arise?

Ans. I should think it would be some considerable difficulty in the schooner to tow the bark, and there would be the liability of the bark's shooting into the schooner and staving her. If she did shoot into, she might stave her and sink her, and endanger their lives.

And to the following Interrogatories, put by J. D. Bryant, Proctor for J. H. Adams and others.

1st Interrogatory. Does not the heavy ice and field ice in its passage out of the Sound, lodge on Great Point Rip?

Answer. A small quantity lodges there, and a very small quantity.

2d Int. If the bark had gone ashore on the shoals, as you have stated in your 14th answer, on what shoals would she have gone, as the wind then was?

Ans. It was according to the tide. If the tide had been to the southward, she would have gone on Ten Foot Shoal, Bass Rip, or the Island of Nantucket, Little Nanpocket or Old Man. If the tide was running to the north, she would have been more liable to get on Point Rip, Great and Little Round Shoal, and Stone Horse.

3d Int. Did you not see the steamer which took the Island City, before you went to dinner on Friday, the 30th?

Ans. I did not; I was in the town early in the morning on Friday.

4th Int. How long before you went to dinner did you last see the Island City?

Ans. I should think it was before breakfast in the morning.

5th Int. Why could you not see the persons come on board the bark from the steamer?

Ans. I can't tell the cause why. They were so low down on the water we couldn't see them—the sea from a boat. The top of the land ranged about half the height of the ship from the water.

6th Int. On which side of the bark did the steamer come up?

Ans. She came up on her stern, I should think three different times or more. The last time she came up, she came up on her port side, abreast of her fore chains when she stopped.

7th Int. Did the bark lie with bow, stern, or otherwise towards you, and how, when you first saw a person on board her?

Ans. She steered about southwest, headed northeast towards the wind. She was quartering towards me, stern that way.

8th Int. From what place were the two boats' crews you have mentioned, sent?

Ans. They were sent from the town of Nantucket.

And to the following Interrogatories, put by William Dehon, Proctor for the owners of the bark Island City and cargo.

1st Int. How long is it since you last went to sea?

Answer. It is ten years since I commanded a vessel, but I have been off to sea since that.

2d Int. At what hours of the day and night did you note the weather on the 21st and 22d January—and where were you at the time?

Ans. On the 21st of January I was in town until nine o'clock in the morning, in the town more or less after daylight until that hour. At nine o'clock, or thereabouts, I saw a ship at the east end of the island (the New York), and I went to her. I used up the balance of that day in working and assisting the captain of that ship. On the 22d I was at the east end of the Island at Sankaty Head, between Sankaty Head and the head of the harbor, trying to get the captain of the steamship New York on board his ship, which lay off the shore there; the wind was then to northward and eastward, blowing a storm. There I remained in that vicinity all that day and all night.

3d Int. Were you out on the Sound on that day?

Ans. No, sir.

4th Int. How near were you personally to Great Point Rip on Friday and Saturday, 30th and 31st January?

Ans. Nine miles from it.

5th Int. At what hours of the day and night of the 30th and 31st, did you observe the wind, sea, and ice, and from what place?

Ans. On the 30th I was in the town, and observed the wind, weather, ice, and ship, from one o'clock until dark. On the 31st, I observed the sea from eight o'clock in the morning, after breakfast, until night. I was in the town all the day, with the exception of meal times.

6th Int. Were you out on the Sound on either of those days, or off the north and eastern side of Nantucket?

Ans. No sir, I was not.

7th Int. How far was point "C" from the tower?"

Ans. Well, I should think it was between eight and ten miles in a straight line.

8th Int. How far could you see on Saturday with your glass? How far without?

Ans. At times, with my glass, I could see as far off as where the Island City lay; without it, I could not see as far; I could see Great Point Light at times without it, and then I couldn't see. I saw the R. B. Forbes as she came down; I saw her bearing north by west from Nantucket town, with three sails set; she went to eastward, went round Point Rip, went two-thirds the distance from the point to where the bark lay, turned round, went round Point Rip, went into the Sound, went to our light-ship, which had drifted from her station and stopped there some time, and then as though they were talking together; and then hauled his wind, and steered northeasterly for Monumoy.

9th Int. Where did the steamer New York lay while you coaled her?

Ans. She lay within three-quarters of a mile of the shore, off Siasconset; she lay there three days; she was at the island seven days; she came into the head of the harbor on the 21st of January, about a mile and a half off the shore. I was then four days getting the captain and the pilot on board of her where she lay, and ordered the pilot to get up steam and take her round to Siasconset, within three-quarters of a mile of the shore, as nigh Pocket Rip as possible, without getting her on to it.

10th Int. When did the steamer New York leave her anchorage off Siasconset?

Ans. She left there at five o'clock in the afternoon of the 27th.

11th Int. When did your light-boat drift from her station, and what caused her to drift, and how far did she drift?

Ans. She drifted in the early part of January, I don't exactly recollect the day; she was caused to drift by wind and ice; I should think she drifted about ten miles; she drifted to the eastward, a little to the southward.

12th Int. Which was nearest the tower—the light or point "C"?

Ans. I think about equally distant; I mean Great Point Light.

13th Int. What time of day was it when the Westernport reached the bark, and at what time did she begin to tow her?

Ans. When I first saw her at the bark, it was about one o'clock; it might have been a little before. Pretty soon after five o'clock she began to tow her.

14th Int. What advantage was there in towing the bark stern foremost?

Ans. I can't see any particular advantage in towing her stern foremost; but I do not think it would have been possible to have got hold of her in any other way. She was laying riding at her anchor, and she certainly must have brought the chain from fifteen to twenty fathoms out of the water every time she pitched, which would have

endangered the steamer very much to have crossed her forefoot nigh enough to have got a line to her.

15th Int. After they had hold of her, could they not have towed her bow foremost?

Ans. No, sir; I think it would have taken a great deal of time, and a great deal of trouble; and they would have stood a chance of losing the ship if they had undertook to shift their lines from stern to bow.

16th Int. Did you see your men make the measurements spoken of in your answer to the 20th interrogatory?

Ans. No, sir, I did not; but I measured it myself the next morning. I could not have coaled that steamer on any day after the 27th.

17th Int. Why not?

Ans. Because a very little surf made the ice move about so we could not move our boats through the ice; they were of cedar.

18th Int. If the Island City had laid at "X" three days through a heavy blow, amid drift ice, without drifting, should you not conclude either that she had an anchor, or that her chain was fast and round something on bottom?

Ans. I should think she had one or the other.

19th Int. Was not the drift ice in the Sound very heavy, and the sea very bad, on Sunday and Monday, 25th and 26th January?

Ans. There was a great quantity of ice in the Sound on the 25th and 26th. The sea was very smooth indeed. I don't know that I had ever seen it smoother. It had blown a gale of wind the day before from the northwest.

20th Int. Suppose the Island City at point "A," during the 24th, 25th, and 26th, anchored with 800 weight—was she not in danger of being carried away or cut through by the drift ice?

Ans. I think she was.

21st Int. Taking the circumstances of the ice, tide, sea, and wind, on Saturday, 24th, 25th, and 26th January, should you consider her in a position of safety [at "A"]?

Ans. I should not, sir.

22d Int. How happened you to see the bark at Hyannis after she was towed in there?

Ans. On the 5th day of February, the first time our boat went from Nantucket, I passed from Nantucket in the Island Home to Hyannis, and then saw the bark Island City, R. B. Forbes, and Western City, lying there. THOS. A. GARDNER.

Deposition of Daniel Russell, Jr., taken before C. W. Loring, Commissioner, June 8, 1857.

1st Interrogatory. State your name, age, place of residence, and occupation.

Answer. My name is Daniel Russell, Junior; I am forty-two years old; I reside at Nantucket, and am a master mariner.

2d Int. How many years have you resided at Nantucket, and how many years have you been master mariner?

Ans. I was born at Nantucket, and always lived there, except when I have been at sea; I have been master mariner since eighteen hundred and forty-three.

3d Int. Have you often assisted vessels in need of assistance near Nantucket? State how much experience, if any, you have had in assisting vessels.

Ans. I have assisted some along there this last two or three years; I should think twelve or fifteen vessels—I couldn't say exactly.

4th Int. Were you on Nantucket during the month of January last? If so, how were you engaged from the twentieth to the end of the month?

Ans. I was on Nantucket in January. Most of the time I was engaged in coaling up the steamer New York, between the twentieth and the end of the month.

5th Int. Did you see the bark Island City during that time? If so, state when and where you saw her, and describe her situation particularly.

Ans. I did see the bark Island City during that time. The first time I saw her, I think, was on the 19th of January, in the Vineyard Sound, bearing about north-northwest from the tower in Nantucket, distant, I should think, ten or twelve miles. She was laying there at anchor, apparently, with a pole or flag-staff at midships, with an American flag flying, union up. I saw her again on the twentieth, in about the same place. I saw an object on the twenty-first which I called her, but couldn't tell for a certainty; it was in the same direction. The next time I saw her was on the following Monday, I think—I think it was the twenty-sixth—at the east end of Nantucket, laying to an anchor, no colors set; I couldn't see any one moving on board. I saw her every day from that time until the thirtieth, I think it was. On that day I saw a propeller come down the Sound, and go up to the bark and attempt to board her, go up round her some times and put some men on board, and I saw them heaving at the windlass. I watched her until about four o'clock in the afternoon, and I went home to tea. I went on to the tower after tea, and then it became so dark I couldn't see her. She had gone then with the bark.

6th Int. What did the flag hoisted "union up" imply?

Ans. That implied that they wanted assistance, but were not in actual distress. That is my construction of it.

7th Int. Look on the chart and point out where you saw the Island City.

Ans. When I first saw her she was near the point marked "X." I afterwards saw her at the point "C," a little south of it, I should think.

8th Int. Describe her situation, as to safety or danger, in each place you saw her.

Ans. I should think when she was at point "C" she was in a very unsafe place; when she was at point "X" she was not in a safe place, but safer than at point "C."

9th Int. State particularly the dangers to which she was exposed in each place, at the times when you saw her.

Ans. At point "C" she was exposed to all the ground swell of the Atlantic Ocean and to the tide, and to the whole sweep of the gale from the northeast around to the southeast, by the eastern board. At point "X" she would be safer, because she would be clear of the ground swell, and the tide was more true, which would cause her to lay in a safer position.

10th Int. Was there or not ice in the Sound and round Nantucket at the times when you saw her there; and, if so, did it increase or diminish her danger?

Ans. There was ice, any quantities of it: it increased the danger. Not so much ice when I saw her the first time in the Sound, as when I saw her afterwards.

11th Int. Describe particularly the state of the sea and weather, from and including Monday, January 26th, until the next Sunday.

Ans. The weather was good on Monday until Friday, what we should call good pleasant weather, but cold; the sea was smooth. On Friday, in the forenoon it was quite pleasant; in the afternoon it commenced breezing from the north-northeast to northeast; it kicked up a heavy sea, which made it very rugged. On Saturday, strong gales from east-northeast in the morning; from that it veered round to east-southeast, blowing a strong gale, squalls of snow and rain. On Sunday, I think, the wind was southeast, blowing a strong gale.

12th Int. Was there any change in the ice in the Sound and round Nantucket on Friday or Saturday? If so, describe the same particularly, and state at what time it took place.

Ans. Friday night the ice went out; it went out in large bodies, and left the sound within three miles of Nantucket Bar. Saturday, there was a great deal of ice left the Sound.

13th Int. State what direction, and point where the ice went out on Friday and Saturday.

Ans. It went out by Great Point Rip, with the course of the tide. It would pass out in the ship channel near Great Point until it gets by Point Rip, then the tide takes a southerly course on a southerly tide, which carries it in a southeast direction.

14th Int. If the Island City had been anchored with about 100 fathom chain and an 800 pound anchor, at the point where you saw her near "C," what, in your judgment, would have become of her Friday night, wind, weather, and ice as they were?

Ans. She would have stood a chance of being carried to sea, or carried on shore.

15th Int. If she had gone on shore, where would she probably have gone on shore, and what would have been the result to her?

Ans. If she had gone on shore, she would probably have come abreast of what we call the head of the harbor. The result would have been fifty per cent. lost to the owners or underwriters, at the least calculation.

16th Int. Was the place where she was anchored, near "C," a place of safe anchorage, and if not, why not?

Ans. No, sir, it was not. She would be exposed to all the ground swell of the Atlantic Ocean, the whole sweep of an easterly gale, liable to be carried on to the rips or shore by the ice, or cut through by the ice.

17th Int. Would Point Rip afford any protection to her there, and if so, what protection?

Ans. I shouldn't think it would.

18th Int. Would Point Rip protect her from the ice as she lay near "C"?

Ans. No, sir, in my opinion it wouldn't.

19th Int. Did you see the men from the Westernport when they boarded her on Friday? Where were you at that time, and what opportunity had you to see?

Ans. I saw the men after they were on board. I was in the tower of Nantucket looking out. I couldn't tell how they got on board, being so rugged we thought it impossible for them to go on board in a boat.

20th Int. Was it or not a dangerous undertaking to board her at the time she was boarded by the men of the Westernport?

Ans. I should think it was.

21st Int. What was the power of glasses you had at the tower, and used at that time?

Ans. The power was very good, indeed. With one of the glasses that was in the tower at that time, you could see the cloth in the hands of the man who was cleaning the light at Great Point Light House, which is nine miles from the tower, when it was clear.

22d Int. Were any attempts to assist the Island City whilst at point "C" made by persons on the island? If so, what, by whom made, and why did they fail?

Ans. There was. Capt. Thomas A. Gardner had two boats' crews at the east end of the island ready to board her as soon as they could get off from the beach. I had a boat's crew in town ready to come up there if there should come up a gale from the eastward while she lay there. They failed on account of the ice on the shore. They couldn't get the boats off.

23d Int. Was point "C" a safe place for a steamer drawing fourteen or fifteen feet of water to go at the time the Westernport went to the Island City? And if not, why not?

Ans. It was a safe place as long as the weather was good and the ice was clear; but if a strong ebb tide had made and brought the

ice down upon her, with the north wind she had, when she was there, she would have stood a good chance of being shoved ashore on the shoal ground to the southward of her.

24th Int. Did you see the Forbes on Saturday, the 31st of January? If so, at what time? What did she do, and what was the state of wind and sea at that time?

Ans. I saw the Forbes the 31st, between nine and ten in the morning, I think it was; blowing a strong gale from about east-northeast, squalls of rain, snow, and a bad sea running. When I first saw her, I think she was steering east, bearing from the tower about north-northeast; she went down by Great Point, and went about two-thirds of the way to where the Island City lay the day before; she then came back, and went up to the light-ship, which lay off Great Point, and stopped there fifteen or twenty minutes, and then hauled her wind, and steered off to the north.

25th Int. Have you any interest in this matter, or the result of it?

Ans. I have not.

And to the following Interrogatories put by H. A. Scudder, Proctor for the schooner Kensington and crew.

1st Interrogatory. If the bark Island City, when you saw her at point marked "X," was without spars, rudder, and anchor, and holding by her chain, should you or not consider her in very great danger?

Ans. I should consider her in danger if there had been no solid bodies of ice to break the sea off to the windward of her. I should consider her not in very great danger.

2d Int. Why not?

Ans. Because she had the ice to protect her. It would depend upon the number of fathoms of chain she had whether she was in very great danger.

3d Int. Was she in any danger, and why?

Ans. She was in some danger, because she had no anchor.

4th Int. Does ice protect a vessel under such circumstances, and render her position safe? How would she be in danger when the ice moved? Would it not carry her with it?

Ans. The ice, if in a solid body, and don't move, does protect a vessel in such circumstances, and render her position safe. It would carry her with it when it moved.

5th Int. Would she have been in danger if she had not been protected by ice, under the circumstances stated, and what?

Ans. She would have been in some danger of dragging if a gale of wind had come on; but I don't think of going ashore, because she would have gone up and down with the two tides if the gale had been from the east or the western board.

6th Int. Was the ice in a solid body about the Island City, either on the 19th, 20th, or 21st days of January? and on which, if either of those days?

Ans. I couldn't say. It was in a solid body between me and the Island City; but whether it extended way to her I couldn't say.

7th Int. Would any, and what winds have carried her upon the Horse Shoe?

Ans. No, sir, I don't think any wind would.

8th Int. Where would a north-northeast or northwest wind have carried her if at point "X," under the circumstances stated?

Ans. A northwest wind would have brought her towards Nantucket, depending upon the tide, of course. A north-northeast would have brought her over the slue of the Horse Shoe, where there is from two and a half to three fathoms.

And to the following Interrogatories put by J. D. Bryant, Proctor for J. H. Adams and others.

1st Interrogatory. How long since you have ceased following the seas as your occupation?

Ans. I am following it now in summers; in the winter I haul up.

2d Int. At what time, between the 19th and 31st of January, was there the greatest quantity of ice in the Sound?

Ans. I think anywhere from the 21st to the 29th we had the most ice there.

3d Int. Was not Friday, the 23d January, one of the coldest days of last winter?

Ans. No, sir, not with us.

4th Int. Was it not extremely cold?

Ans. It was.

5th Int. Did not the ice on that day and the next make unusually fast?

Ans. It did.

6th Int. Was the operation of coaling the New York a difficult one?

Ans. It was.

7th Int. How much of the time, from the 20th to the end of the month, were you occupied in coaling her?

Ans. I should think it was about a week.

8th Int. How far were you from point "C" on the chart when you saw the Island City?

Ans. I should think from nine to ten miles.

9th Int. At what time on Friday, the 30th, did the steamer Westernport come to the Island City?

Ans. When I saw her I should think it was between ten and eleven.

10th Int. What time did she start away with the bark?

Ans. Between four and five in the afternoon.

11th Int. Were there not great quantities of field ice moving in the Sound on the 25th and 26th of January?

Ans. There were great quantities in the Sound. I don't think

they were moving much. It was one solid body of ice as far as you could see in the Sound. I don't think it was moving much.

12th Int. Could you see clearly whether the ice was moving at the point "X"?

Ans. No, sir.

And to the following additional Interrogatory put by Messrs. Hutchins and Wheeler, Proctors for the schooner Kensington and crew.

Was there no danger of the Island City going upon any other shoal than the Horse Shoe while lying at point "X," in the situation mentioned—that is, without spars, rudder, and anchor, and holding on by her chain? Are there no other shoals about there upon which she might have been blown?

Ans. I don't think there is that she would have gone on to. I'll give my reasons: I had the run of a brig a few years ago, that was dismasted, and had lost her cables and anchors; she drifted up and down there twenty-four hours; she had a strong gale from the northwest, and drifted back and forth.

And to the following additional Interrogatory put by Daniel W. Gooch and R. H. Dana, Jr., Proctors for the Westernport.

Please to state in detail the reasons why you think that no direction of wind would have driven this vessel aground on the Horse Shoe from point "X."

Ans. With a west wind, she could not go ashore there no how; with an east wind, it would carry her across in two and a half fathoms of water; with a southeast wind, it would carry her on the edge of it in three fathoms of water; with a south wind, it would carry her into the ship channel, where there is nine, ten, and eight fathoms of water; with a north wind, it would bring her down into the channel again, where there is six, seven, up to eight fathoms of water; with a southwest wind, it would carry her into the channel, where there is seven and eight fathoms of water; with a southeast wind, and a tide setting west, there would be a possibility of her striking in nine feet.

DANIEL RUSSELL, JR.

Deposition of Charles W. Bishop, taken before C. W. Loring, Commissioner, June 8th, 1857.

1st Interrogatory. What is your name, age, place of residence, and occupation?

Ans. My name is Charles W. Bishop; I reside in Brooklyn, New York; I am forty years old; I have charge of the business of a merchant in New York, under a power of attorney.

2d Int. Where were you during January and February last, and in what business engaged?

Ans. On the 16th of last January I left New York and came on

to Boston, to act as the agent of the steamer Westernport. I remained here until the early part of March, acting as such agent.

3d Int. In what business was the Westernport engaged at that time?

Ans. In carrying freight and passengers between Boston and New York.

4th Int. Did you learn at any time that the Westernport was taking or had taken the Island City into Hyannis? If so, when and how did you learn it?

Ans. On the morning of Saturday, the thirty-first of January, I received a telegraph despatch, signed Norris, from Hyannis, stating that the steamer Westernport was then coming into that harbor with the bark Island City in tow.

5th Int. Did you communicate to any of the owners of the Island City the information you had received? If so, to whom, and what reply was made to you? State particularly.

Ans. I was in the Merchants' Exchange Buildings when I received that telegraphic message; immediately after receiving it, I met Mr. Peirce, one of the owners of the bark Island City; I handed him the telegraph despatch. After reading the despatch, he said to me, I am very glad of it, the old granny they have for a captain in the R. B. Forbes is not fit for the position he occupies; he has left our property down there for a whole week, exposed to destruction, while he has been fooling or humbugging round Provincetown, towing light-boats. Then, turning to me, he said, I hope the Westernport will succeed in getting her in, and make a good thing of it. Mr. Peirce spoke under strong excitement.

6th Int. Did you go to Hyannis; if so, when and with whom did you go?

Ans. I went to Hyannis that afternoon, the thirty-first, in the four o'clock train, in company with Mr. Peirce.

7th Int. Did you go on board the Island City; if so, when and with whom?

Ans. I went on board the Island City the next morning, Sunday, with Mr. Peirce, Mr. Bacon—a gentleman who lives in the vicinity—and I think Captain Norris, I am not quite certain.

8th Int. Was Capt. Stevens on board the Island City when you went on board? How soon did you see him after you went on board?

Ans. I can't state whether he was on board when I first went or not. About half an hour after I went on board, I went into the cabin; I then saw a person who was pointed out to me as Capt. Stevens of the bark.

9th Int. Did you hear any conversation between Mr. Peirce and any one on board the bark relative to pecan nuts and articles of clothing or other articles of the officers or crew of the Island City? If so, state the same.

Ans. I heard Mr. Peirce ask Capt. Berry of the Westernport, who was on board at the time, if he knew anything of any clothing which

had been saved which had been taken from the bark and belonged to the seamen and officers. Capt. Berry replied that he did not, but referred him to Mr. Parker, the mate of the Westernport. Mr. Parker, who was present, answered Mr. Peirce, that when he boarded the bark, he found the chests in the forecastle and main cabin thrown out on to the floor, and their contents lying scattered about. That the men of the Westernport had taken some of the clothing, as they were wet and cold, and had worn it to the steamer, but that it was their intention to return it all to the bark again. Mr. Peirce then asked in reference to some pecan puts, a large chest of which was standing at that time in the cabin open. Mr. Burgen, the first engineer of the Westernport, who had charge of the after-cabin of the bark, he answered Mr. Peirce that he found the pecan nuts, the chests of clothing, and nautical instruments lying about the cabin floor when he first entered, that he had picked up and replaced them as well as he could, and had been eating the nuts occasionally all the time he had been on board. To all of which Mr. Peirce answered it was all right, you had a perfect right to use the clothing for the time being, and to use any provision you found on the ship if you required it; if the clothing was returned, that would be satisfactory. [Mr. Bryant objects to what Mr. Parker and Mr. Burgen answered.]

10th Int. How long did you remain on board the Island City, and when did you return to Boston?

Ans. I think we were on board the Island City in the forenoon of that day about two hours, and again in the evening I was on board, but not with Mr. Peirce, some two or three hours longer. I returned to Boston in the early train, Monday morning.

11th Int. When did the Westernport reach Boston?

Ans. The following Friday, about ten o'clock A. M.

12th Int. State, if you know, whether the steamboats connecting with the railroad, and forming the lines from Boston to New York, were stopped at any time during the month of January or February; and if so, for how long time, and why they stopped?

Ans. They were stopped a portion of both months; Sound navigation was virtually closed on the fifteenth of January, and remained closed up to somewhere about the twentieth of February, I can't specify the exact date; it was closed on account of the ice.

13th Int. Did you procure cargo for the Westernport at Boston for New York? if so, at what rates of freight?

Ans. I engaged a cargo for her, all the freight I wanted for her as early as the twentieth of January, at the rates of eight cents a cubic foot.

14th Int. Did the Westernport return again to Boston? if so, when and what rate did she get for cargo to New York?

Ans. She returned again to Boston about the twenty-third or twenty-fourth of February, I can't recollect the exact date; I had engaged a freight for her at that time at the rate of fifteen cents per cubic foot.

15th Int. State whether or not you had frequent application for her to take cargo to New York, after the time when you engaged the cargo at eight cents per foot, and prior to February twentieth; and if so, state the rates offered.

Ans. I was overwhelmed with applications for freight every day, literally overwhelmed; I could have loaded such a ship every day in the week from the time navigation closed until it opened, without any difficulty. I could have loaded her at the highest rates named there, from twelve to fifteen cents. I mean by navigation closing, navigation on the Sound.

16th Int. In what time would the Westernport make a trip from Boston to New York, and back again to Boston, if she went with no unusual detention?

Ans. She could make a trip in a week under such circumstances.

17th Int. State, if you know, the number of feet of cargo the Westernport would carry with ease and safety.

Ans. I can't answer the number of feet she would carry with any certainty. I could tell what she would manifest at such rates.

18th Int. What would she manifest, and how do you arrive at the amount?

Ans. She would manifest from twenty-five hundred to three thousand dollars. I arrive at that conclusion from having seen the manifest of a number of her cargoes at different rates.

19th Int. Did she bring cargo from New York to Boston? if so, what quantities, and at what rates of freight?

Ans. She brought cargo from New York both trips; the first time she was something over half full at different rates varying from six to eight cents per cubic foot. The second time she was about full, at considerably better rates; they varied from ten to fifteen cents as near as I can remember.

20th Int. Did you superintend the delivery of cargo on her arrival, after taking in the Island City? If so, state the value of the same, or as near as you can, and your means of knowledge.

Ans. I did superintend, I was present on the wharf seeing to the delivery of cargo and the payment of freight. Her cargo was not worth less than fifty thousand dollars. I arrive at the valuation by taking up her manifest and computing the value of each article as nearly as possible. My impression is her cargo was worth very much more than that, but to be on the safe side I compute it at fifty thousand.

21st Int. State whether or not the bill now shown you was the bill of lading given out by Mr. Crowell for cargo on board the Westernport at the time when she took in the Island City; and also, if you know, whether other forms of bills of lading were used; and if so, why they were used.

Ans. This is one of the bills of lading given for cargo actually on board the Westernport on the trip referred to. This is the form that was in use by the company at that time, and there was none other

that I am aware of in use at that time by the company. There may have been instances when merchants send in their own bills of lading, but if there were such at that time I am not aware of it. The company always preferred to sign their own bills of lading, but in a hurry they sometimes signed those sent in by the merchants.

[The bill of lading is marked A (C. W. L.), and is hereto annexed.]

No. 22408. A (C. W. L.)

Cromwell's Portland Steamship Line.

Pier 13, N. R.

Received, in apparent good order, from A. Claflin, on board Steamer
One hundred and eighteen rolls leather.

(*Not accountable for Leakage*, Breakage, or the Rust of Iron or Steel), being marked and numbered as in the margin, and are to be delivered in the like good order and well-conditioned at Boston (the dangers of Fire at Sea, or on shore, accidents from Machinery, Boilers, Steam or any other accidents and dangers of the Seas, Rivers, and Steam Navigation, of whatever nature or kind soever, excepted), unto A. Claflin, he or they paying Freight for the said property at the rate of 25 cts. pr. 100 lbs. Also, $ being the amount of charges on said property, payable on delivery as aforesaid.

For H. B. CROMWELL, Post.

New York, January 21st, 1857.

Goods to be taken from Wharf by the consignee immediately after the arrival of the steamer, otherwise they will be stored at the owner's risk and expense.

22d Int. State the value of the steamship Westernport, if you know the same.

Ans. I should consider the Westernport worth from forty to forty-five thousand dollars as she then stood. From my knowledge of her as a freighting vessel I should consider her good property at forty-five thousand dollars.

23d Int. Have you any interest in this matter, or the result of it?

Ans. None that I am aware of.

And to the following Interrogatories, put by William Dehon, Proctor for the owners of the bark Island City and cargo.

1st Interrogatory. Was not outside navigation closed or obstructed so as to prevent the regular trips of your boats, part of the month of January? and if so, how long?

Ans. It was. I think the Vineyard Sound was closed from ten days to a fortnight in the latter part of January and early part of February.

2d Int. Was not the Westernport detained at Tarpaulin Cove, or some port in that vicinity, at that time?

Ans. She was at Tarpaulin Cove a number of days during the latter part of January.

3d Int. Had the Westernport any passengers, and if any, how many on the first trip of which you have spoken, from New York?

Ans. There were none but one that may strictly be called a passenger, that I am aware of. There were some five or six parties, stevedores' men and a clerk; but they were in the regular employ of Mr. Cromwell, and were sent on at his expense, to assist in the loading and unloading of the ship here.

4th Int. Were you employed as stated in your first answer prior to the sixteenth January last?

Ans. I was not; I was in the employ of Mr. Cromwell. I had been previously to last January in his employ two years.

5th Int. Had you acted as agent of the Westernport previous to said sixteenth of January, and if so, how long?

Ans. I had not acted as her agent. I had been receiving agent and clerk on the dock for her and nine other boats.

6th Int. Were you not paid for your services as agent of the Westernport, in whole or in part, by a commission on the freight obtained, or on the earnings of said vessel?

Ans. I was not. I continued under my old salary, merely sent here to act as her agent in the mean time.

7th Int. How do you know that the steamboats connecting with the railroads between Boston and New York were not running between the fifteenth of January and twentieth February, as stated in your twelfth answer?

Ans. I know that they didn't arrive in New York at their regular time on the sixteenth, one of them I believe subsequently got through. I also know the continuance of it from common newspaper reports, and that the continuance of our line was contingent on the reopening of Sound navigation.

8th Int. Have you any other means of knowing?

Ans. None other that I remember at present.

9th Int. Is not your salary to be in some way affected by the result of this suit, or are you to be in any way directly or indirectly affected thereby?

Ans. Not in the slightest degree; I have been all paid up three months since.

And to the following Additional Interrogatories put by Daniel W. Gooch and R. H. Dana, Jr., Proctors for the Westernport.

1st Int. When you say the Vineyard Sound was closed, do you mean that the Westernport could not go between Boston and New York?

Ans. I mean she could not in ordinary navigation; she could have gone to sea southward of Nantucket Shoals undoubtedly; that is, when she came first to Tarpaulin Cove or at any time afterwards. The Vineyard Sound is the ordinary course.

2d Int. Did the clerk or stevedores have anything to do on board the Westernport, or only come in her to do the duties of stevedores or clerks here in Boston?

Ans. The ship had a full complement for all the necessary work of the vessel. They were only coming here to work on shore.

3d Int. Why did stevedores come to Boston at that time?

Ans. Because business in New York in Mr. Cromwell's Baltimore line was suspended on account of the ice in Chesapeake Bay. And as he had hired them by the month they had nothing else to do.

4th Int. Do you know whether or not the Vineyard Sound was closed after the third day of February, so that the Westernport could not have passed through it on her return to New York, if it had not been delayed by taking the Island City into Hyannis?

Ans. I do not know. I am not prepared to answer that question.

CHARLES W. BISHOP.

Deposition of Kingsbury E. Parker, taken on behalf of the owners, officers, and crew of the steamer Westernport, before William S. Dexter, Commissioner, October 6, 1857.

1st Interrogatory. State your age, residence, and occupation.

Answer. I live at Portland, Maine; I am 42 years old; I am a seaman; I have been officer of vessels for the last eight years.

2d Int. Have you ever been an officer of a steamer? If so, what officer, and how long?

Ans. I have been first mate of the steamer Westernport for the last two years.

3d Int. Were you on board the Westernport in January last, when she fell in with the Island City?

Ans. I was.

4th Int. Where and in what condition did you find the Island City?

Ans. We found her about twelve miles east-by-south from Nantucket Light, in eight fathom water. She was lying there with an anchor down, rolling and tumbling about; she looked as if the crew had gathered up what they could and left her in a hurry. She had a boat lying alongside, with a frame over it, all stove to pieces.

5th Int. Who first went on board the bark from the steamer, and in what manner did you get on board? Describe particularly the dangers, if any, incurred in boarding her.

Ans. I went first on board. I went up on the stern hawser. I tried first to board her alongside from a boat. It was so rough that I couldn't do it. I saw a hawser hanging over her stern, and I went up by it, after making several attempts and getting wet. The men were so cold and wet that they couldn't get up the hawser. I lowered a line and hauled up one of them, named John Halsted, or something like that. The other one said he didn't want to risk his life to get on board. I left him in the boat.

6th Int. What was the name of the man who remained in the

boat? Did he afterwards get on board the Island City? If so when and how?

Ans. I think his name was Edward Donley. He did get aboard, about an hour afterwards, by the hawser.

7th Int. In what way did you get wet in getting on board?

Ans. After I got on the hawser. She was pitching so that when she came down I went under—the hawser being covered with ice, so that I couldn't get up quick out of the way of the sea.

8th Int. Were you or not in danger of being washed off, while you had hold of the hawser and were being washed by the sea?

Ans. I was.

9th Int. Was there or not any danger to the boat while you were boarding the bark? If so, what danger?

Ans. Just as we left the Westernport we were very near being struck by her wheel; the sea was rather heavy for a small boat like her—it was too rough: she was a twelve foot boat. When we got under the bark's counter, there was danger; the bark kept smashing down in the sea.

10th Int. Describe what you saw on board the Island City when you first boarded her: on deck, in the cabin, and in the forecastle.

Ans. I went first into the cabin. I saw a chest on the floor; two trunks, I think; and several pieces of clothing lying round the cabin. I saw several quadrants, two barometers—nothing else of any consequence. There was some clothing on deck, near the forecastle doors; two blue shirts, and a pair of pants; and several other pieces which I don't remember exactly. I didn't go into the forecastle at all; I saw two chests in there.

11th Int. How many men went on board the Island City from the Westernport? State their names if you can.

Ans. I think there were six, besides myself: John Halsted, Edward Donley, one named Hall, the cook's colored boy—I don't remember the names of the others; one of them was a fireman, I think.

12th Int. State what was done by you and the men while you were on board the Island City. State fully and particularly.

Ans. We hove up her anchor. It was about half-past twelve in the day when I got aboard. I first went forward and examined the windlass, and found it in order and brakes to work with. I then went aft and told Capt. Berry that there was a good windlass, and everything ready to get up her anchor. I asked him if I should slip the chain; he told me no—to get the anchor if possible, as the Westernport had lost one of hers. I then took the deep sea line, bent it on to the boat, and dropped her astern. Capt. Berry hove a line into her, and I then hauled her up again and made her fast to the bark's quarter. We then hove the Westernport up within about 60 yards of the bark. We then hauled the boat back and forward by the line, until we got four more men aboard the bark—making six in all, besides me. We then commenced heaving on the windlass. About six o'clock we got her anchor up, and then steered

towards Hyannis. About one o'clock next morning we came to anchor on the shoals, near the Bishop and Clerks: wind about east by south, and some swell heaving in. After we had got the anchor up, on Friday afternoon, we went below and made a fire in the cabin, and set a watch of one man on deck, in case there should be a hail from the steamer. I wanted to know what she was loaded with, and I searched the mate's log-book to ascertain. I found nothing in the log-book to show what she was loaded with. I then went to the chest in the cabin and lifted up the lid. I opened the till and saw lots of papers in it. I looked among them for a manifest or bills of lading, to ascertain what she was loaded with. In doing so, I found a paper of money in the till, containing twenty-five dollars and a half in gold and silver. I found nothing to show what she was loaded with. I then looked round the cabin, and picked up all the officers' instruments; took them on deck; put them on a hawser, and covered them over. I then went down in the cabin to change my clothes; I pulled off my boots, which were wet, and put on a pair which laid in the cabin behind the stove. The men all changed their clothes, more or less: some in the forecastle and some in the cabin. After we came to anchor, at one o'clock Saturday morning, we stayed there until about four; I then went aboard the steamer, and went to bed—the bark being then made fast alongside the steamer, and the second mate being in charge of the steamer. About half-past three he called me, the wind being fresh from the eastward, and the sea making fast. I went into the cabin and called Capt. Berry; he told me to order the engineer to get steam as quick as possible. Before I got on deck the steamer had parted her bowlines to the bark, causing the two sterns to come together, and every time the bark raised up and down her counter struck the Westernport's house, staving to pieces about fifteen feet of it, right through into the cabin. I then cut the stern line as quick as I could, and the Westernport then rode by the spring hawser until we got up the bark's anchor. About five o'clock Saturday morning we got started with her towards Hyannis, and about ten o'clock came to anchor in Hyannis Harbor.

13th Int. Was the chest which you opened locked or not?

Ans. It was not.

14th Int. Were you in the forecastle any time? If so, when?

Ans. I was not.

15th Int. Why did you and the men change your clothes while on board the Island City?

Ans. Because we were all wet.

16th Int. What became of the instruments, money, clothing, &c., taken by you and the men from the Island City? State particularly.

Ans. I delivered the money to Captain Stevens; I delivered the instruments and boots to his mate; the clothing was carried aboard by Mr. Bergin, chief engineer of the Westernport, on Sunday.

17th Int. Were any articles of clothing, or any other articles,

taken from on board the Island City by yourself, or any other person to your knowledge, and not returned?

Ans. Not to my knowledge.

18th Int. Who had charge of the Island City after you arrived at Hyannis?

Ans. Mr. Bergin, chief engineer.

19th Int. Were the articles you have spoken of as having been taken by yourself, or your men, returned on board the Island City? If so, how do you know they were returned?

Ans. They were. I know that all I took were carried on board; I can't say for the men. They said they had given up all they had. I couldn't find anything on board the boat afterwards.

20th Int. Did you give any orders as to returning the articles? If so, what, and what was done in pursuance of those orders?

Ans. I did not give any.

21st Int. What, in your opinion, would have become of the Island City on Friday night, if she had not been taken by the Westernport?

Ans. I think she would have gone ashore on Nantucket.

Cross Interrogatories propounded on behalf of the Claimants, and Answers.

(See the objection noted at the end of this deposition.)

1st Cross-interrogatory. While the bark lay in Hyannis Harbor, who of your officers and crew remained on board of her?

Ans. Mr. Bergin, one fireman, and one sailor, I think.

2d Cross-int. Where was the damage done to the house of the Westernport by the Island City repaired, and by whom?

Ans. In New York, by Crooker & Bell.

3d Cross-int. Did you, on your last passage from Tarpaulin Cove, speak the Light-boat? If yea, what information did she give you?

Ans. We did speak the Light-boat. She gave us no information about the bark. We ran down to her because she had her colors set in the rigging, and we thought she was in distress.

4th Cross-int. Are you still in the employ of the owners of the Westernport?

Ans. I am. KINGSBURY E. PARKER.

NOTE—The claimant objects to all questions to the witness, and to all statements by him, which bear upon the charges made in the answer, or which are matters of opinion.—W. S. DEXTER.

United States of America, Massachusetts District, *ss.*

Interrogatories to be administered to W. R. E. Floyd, Andrew Anderson, Edward Donely, John Halsbad, Edward Muller, Michael Burns, Richard Carrick, Henry Smith, Chas. F. O. Burke, Charles Hand, G. W. Gartley, W. D. Hall, Leonard Spanburgh, Mary Walsh, James Welsh, of New York, in the State of New York, witnesses to be produced, sworn, and examined in a certain cause of

admiralty and maritime jurisdiction now pending in the District Court in and for the District of Massachusetts, wherein Henry B. Cromwell, William Cromwell, Joseph Noble, and others, are Libellants against the bark Island City and her cargo, and Andrew Peirce, Jr., Thomas W. Peirce, George Bacon, of firm Peirce & Bacon, are Claimants, on the part and behalf of the Libellants, before the Commissioner in the writ hereto annexed.

1st Interrogatory. What is your name, age, place of residence, and occupation?

2d Int. Were you on board the steamship Westernport in January last, on her passage from New York to Boston, when she found the bark Island City off Nantucket, and took her into Hyannis? If yea, in what capacity?

3d Int. Did you go on board the Island City, at any time? If so, when did you first go on board, and who went with you?

4th Int. Did any persons from the Westernport go on board the Island City before you? If so, who were they?

5th Int. How did you get from the Westernport on board the Island City, and what was the state of the weather and seas at that time?

6th Int. State particularly what you saw, or found, when you first went on board the Island City, on deck, in the cabin, and in the forecastle?

7th Int. Did you find any articles of clothing, of officers or men on board? If yea, state where, and in what condition you found the same?

8th Int. What persons from the Westernport first looked, or went into the cabin of the Island City? If you say that you did, describe the condition of things in the cabin at that time.

9th Int. Who from the Westernport first looked, or went into the forecastle of the Island City? If you say that you did, describe the condition of things in the forecastle at that time?

10th Int. Did you find on board any articles of clothing or other articles belonging to the officers or crew of the Island City? If yea, where, and in what condition did you find them?

11th Int. Did you find any chests or trunks on board the Island City? If so, how many, how many in the cabin and how many in the forecastle?

12th Int. Were the chests or trunks locked? If you say they were, state how many were locked.

13th Int. Did you, or any one in your presence, open the chests or trunks? If so, how were they opened?

14th Int. Did you, or any one in your presence, break open the chests or trunks, or any of them? If so, how was it done, who did it, and why were they broken open?

15th Int. Did you take any clothing or other articles from the Island City? If so, state fully and particularly all the articles taken by you.

16th Int. If, in your answer to the preceding question, you state that you took clothing or other articles, state why you took them, what you did with them, and whether or not you returned them.

17th Int. If you say that you returned the articles, state whether or not you returned all the articles taken by you, when, by whom, and in what manner you returned them.

18th Int. If you say that you did not return all the articles taken by you, state what articles you did not return, and the reason why you did not return them.

19th Int. Were any articles, to your knowledge, taken from the Island City by any person on board the Westernport, and not returned? If so, state what the articles were, by whom taken, where you last saw them, in whose possession, and the reason why they were not returned.

20th Int. When you ascertained that the men who came in the R. B. Forbes, were the crew of the bark, did you conceal from them, or decline to give up to them, any articles you had taken? State all that you did.

21st Int. If you say that you took any articles, did you or not, at the time you took them, suppose them abandoned by the owners? And state the reasons for your opinion.

D. W. GOOCH, Proctor for Libellants.

A true copy.

Attest, S. E. SPRAGUE, Clerk.

The respondents object to the examination of any witness not named, and to all the interrogatories as leading, and for substance, and not waiving such objections, file the following:—

Cross Interrogatory. Were you one of the officers or crew of the steamer Westernport, when she undertook to tow the Island City into Hyannis?

WM. DEHON, for Respondents.

A true copy.

Attest, S. E. SPRAGUE, Clerk.

Depositions of Henry P. Smith, William A. Hall, Charles Hanel, Charles F. O. Burke, Edward Donely, Andrew Anderson, John Halstead, Edward Mullen, Mary J. Walsh, James Walsh, Richard Carrick, Michael Burns, William R. E. Floyd, and Leonard Spanburgh, witnesses produced, sworn or affirmed, and examined the 26th, 27th, 29th, and 30th days of May, and the 1st and 2d days of June, one thousand eight hundred and fifty-seven, at the city of New York, under and by virtue of a commission issued out of the District Court of the United States for the District of Massachusetts, in a certain cause therein depending and at issue, "wherein Henry B. Cromwell et als. are Libellants, *vs.* the bark Island City and cargo," as follows:—

Deposition of Henry P. Smith.

Henry P. Smith, of the city of New York, stevedore, aged thirty years, being duly sworn, pursuant to the directions hereto prefixed, and examined on the facts of the libellants, doth depose and say as follows, viz:—

Ans. to 1st Int. My name is Henry P. Smith; I am thirty years of age; I reside in the city of New York; I am a stevedore.

Ans. to 2d Int. I was on board the steamship Westernport, in January last, on her passage from New York to Boston, when she found the bark Island City off Nantucket. I took her into Hyannis. I was going round to Boston to superintend discharging the steamship Westernport, on her arrival there.

Ans. to 3d Int. I first went on board the Island City the afternoon we first saw her; two or three of the crew of the Westernport went with me; William Hall was one, the others, I don't know their names.

Ans. to 4th Int. Mr. Parker, the first mate of the Westernport, went aboard the Island City before I did; he was the first one who went aboard of her; none of his boat's crew went on board then.

Ans. to 5th Int. I went in the life-boat from the Westernport on board the Island City; the mate hailed the captain of the Westernport, and sent his boat back from the Island City, he remaining on board of her; I then went in the boat from the Westernport to the Island City; it blowed very fresh, the sea was rough; the Island City was rolling so that her rails rolled under water; when the mate sent the boat back from the Island City, a line was made fast to her and carried to the Westernport, and the boat was hauled back to the Island City by this line when I went to her; the sea was so rough it was with great difficulty we could fetch her at all.

Ans. to 6th Int. When I went on board the Island City I saw on deck spars and rigging and sails; they were lying on the deck; some of the rigging was stopped up, and made fast alongside the rail; the other things were kicking about the deck; her masts were gone, appeared to have been cut away; there was hardly as much rigging lying about as belonged to a vessel of her class. I went into the cabin about eight o'clock at night, after we got the anchor up; I saw there five or six trunks, there may have been more; some coats and pants; the captain's quadrant, and some other instruments for taking the sun; I believe there was a weather glass; a lot of books lying around; a lot of delf belonging to the vessel; spoons, knives and forks, &c.; all appeared to be there for the use of the cabin, and the furniture that is generally used in the cabins, such as tables, chairs, beds, and bedding. I went into the forecastle after I went in the cabin. In the forecastle the crews' chests and their clothes scattered over the floor; the chests capsized, as if they had rolled from one side to the other, while the ship was rolling.

Ans. to 7th Int. We found clothes of the officers and men on board; we found some of the officers' clothing kicking about in the cabin, and some in the trunks in the cabin, some of it dirty and some clean, some old and some new, none of it of any extra quality. We found clothing of the men in the forecastle, some was lying round as if hove down in a hurry, and some was in the chests.

Ans. to 8th Int. I believe the mate was the first who went into the cabin of the Island City, or looked into it; I was not the first; I had been on board some two or three hours before I went into the cabin. I think the mate was the first, because I saw him go down the companion way when he first went aboard the Island City—he came right up again; I was on board the Westernport; after I went aboard the Island City, I think no one went into the cabin till we all went together; I did not see any one go before that. The clothing was scattered about the floor of the cabin, except what was in the trunks; the instruments were lying in the stern, back of the sofa, when I went in.

Ans. to 9th Int. I cannot say who from the Westernport first looked or went into the forecastle of the Island City; I was not the first.

Ans. to 10th Int. We found on board clothing, articles of furniture, and instruments, belonging to the officers and crew of the Island City. The officers' clothing in the cabin was some of it scattered over the floor, some hanging up, and some in the trunks; the instruments were in the stern, behind the sofa; the clothing of the crew was in the forecastle, part of it scattered about the floor, and part of it in the chests. Besides coats and pants in the cabin, there were boots, shoes, drawers, shirts, and under shirts—some on the floor and some in the trunks. In the forecastle there were all articles of the crew's clothing and bedding, scattered about on the floor and in the chests.

Ans. to 11th Int. There were five or six trunks in the cabin, maybe more; I cannot say how many exactly. I think there were four chests in the forecastle when I went in, but am not certain.

Ans. to 12th Int. Neither the trunks nor chests were locked when I first saw them; one of the small trunks in the cabin was tied with a rope.

Ans. to 13th Int. I did not open any of the trunks or chests. The first mate opened one or two of the trunks in my presence; he said he wanted to find her log-book, to know where she was going, and where from. That was all.

Ans. to 14th Int. I did not break open any of the trunks or chests, and nobody else did in my presence. I don't know that any were broken open.

Ans. to 15th Int. I did not take any clothing or other articles from the Island City.

Ans. to 16th Int. I will explain my answer to the preceding question. When we went aboard the Island City, we all got wet by the

sea coming over the boat; I and the others shifted our clothing aboard the Island City; we took off our wet clothes and put on dry, which we found on board the vessel; it was a very cold night, and freezing; we wore these clothes back to the Westernport, and, after we got into Hyannis, we returned them; the first and second mates of the Island City, and some of the crew, came on board, and I returned all I had, and I saw some of the others return what they had; I had a coat, a pair of pants, and a hat, all of which I returned.

Ans. to 17th Int. I returned all the articles that I took. I cannot answer for the rest; they returned some, I know. We got into Hyannis Saturday about noon, and the articles were returned on Monday, I think; I cannot be positive; it was a day or two after we got in. As soon as we found the crew of the Island City had arrived in Hyannis, we sent word to them that we had some things of theirs, and if they came on board they could get them. One of the officers of the Westernport went with a boat to the Island City, and brought over to the Westernport the first and second mates and one or two of the crew of the Island City. The articles we had were then gathered up in a bundle, and sent back to the Island City.

Ans. to 18th Int. I returned all the articles taken by me.

Ans. to 19th Int. There were not any articles, to my knowledge, taken from the Island City by any person on board the Westernport and not returned. When the mate was looking in the trunks for the log-book, as I have stated in my answer to the 13th interrogatory, he found some money, somewhere about thirty dollars, I think; he told me he returned it to the captain of the Island City; I did not see him do it.

Ans. to 20th Int. When I ascertained that the men who came in the R. B. Forbes were the crew of the bark, I did not conceal from them or decline to give up to them any articles I had taken. I have stated I personally did nothing at all. I was only going to Boston in the Westernport to superintend discharging her cargo when she arrived there. I was not one of her officers or crew.

Ans. to 21st Int. I supposed, and so did the others on the Westernport, that the Island City and all on board had been abandoned by the owners. There was the wreck of a boat alongside the Island City, and we supposed that the crew had made an attempt to escape from the vessel; that, in doing so, their boat had been wrecked, and that they were lost.

Cross-interrogatory.

Ans. to 1st Cross-int. I was not one of the officers or crew of the steamer Westernport when she undertook to tow the Island City into Hyannis.

HENRY P. SMITH.

Sworn and subscribed this 26th day of May, 1857, before me,

GEO. W. MORELL,

U. S. Com. South. Dist. of New York.

[Adjourned to 1 P. M. to-morrow, May 27.]

Deposition of William A. Hall.

William A. Hall, of the city of New York, stevedore, aged thirty-one years, being duly sworn pursuant to the directions hereto prefixed, and examined on the part of the libellants, doth depose and say as follows, viz:—

Ans. to 1st Int. My name is William A. Hall; I am thirty-one years of age; I reside in the city and State of New York, and am a stevedore.

Ans. to 2d Int. I was on board the steamship Westernport at the time mentioned in this interrogatory; I was going to Boston in her as stevedore, to help discharge her there.

Ans. to 3d Int. I went on board the Island City about half an hour after we discovered her, about half-past twelve o'clock; Mr. Smith and I went together; no one else at that time; this was the first time I went on board of her; the chief mate and one of the men went on board before we did; Henry P. Smith (the witness examined yesterday) is the one who went on board with me.

Ans. to 4th Int. No one but the first mate and one of the crew went on board the Island City before I did. Smith and I went aboard together. Smith was ahead.

Ans. to 5th Int. I went from the Westernport on board the Island City in the life-boat; it was blowing fresh, and there was a nasty sea; we hauled aboard by a line from the bark.

Ans. to 6th Int. The only thing I saw on deck was a few bales of cotton, pieces of hawsers, and some old torn sails lying on deck; I did not go into the cabin until some five hours after that, when we got up the anchor; after we got her under way, we all went down to see if we could find something to eat; I saw in the cabin a few clothes lying about; they were wearing clothes, appeared to belong to the captain and mates; I did not look about much; I was busy making coffee: I lit a fire, and began to make coffee; I did not go into the forecastle until next day morning; things were all strewed about there, there more than in the cabin—sailor's clothing strewed about the floor.

Ans. to 7th Int. There were articles of clothing of the officers laying about the cabin floor when I went in, and of the men's clothing in the forecastle; the clothing in the forecastle was on the floor; most all that I saw was wet; nothing else that I noticed about it.

Ans. to 8th Int. I could not tell who looked or went into the cabin first, whether it was the mate or the man who was on board with him. I was not the first who went in or looked in.

Ans. to 9th Int. I could not tell who, from the Westernport, first looked or went into the forecastle of the Island City. It was not I. I did not go into the forecastle the first day at all.

Ans. to 10th Int. I found nothing but the clothing, of which I have spoken as scattered about in the cabin and forecastle. I put

on a jacket, which I afterwards returned to the mate of the Island City, in Hyannis. The clothing was nearly all wet in the cabin and forecastle.

Ans. to 11th Int. There were trunks in the cabin and sailors' chests in the forecastle. I do not know how many there were in the cabin or forecastle; could not say how many.

Ans. to 12th Int. I do not know whether the chests were locked. I did not try any of them.

Ans. to 13th Int. I saw the mate open the captain's chest in the cabin; it was not locked; he opened it to see what she was loaded with, looking for her manifest; that is the only one I saw opened; I did not see any broken open.

Ans. to 14th Int. I did not break open any of the chests or trunks, and no one did in my presence, that I know of.

Ans. to 15th Int. I put on a jacket, and wore it when I left the Island City; it was a rough, thick jacket. I returned it to the mate of the bark in Hyannis. I took nothing else.

Ans. to 16th Int. I lost my own jacket in the boat going aboard the bark. I was wet, and put on the one I found. I returned it to the mate in Hyannis.

Ans. to 17th Int. I returned all the articles taken by me. I think I returned the jacket, which was the only article I took, on Sunday, the first day of February; it was put up with the other clothing; the first and second mates of the bark came to the Westernport, the clothing was all put up together, and they took the bundle back to the Island City.

Ans. to 18th Int. I returned all the articles taken by me.

Ans. to 19th Int. There were no articles, to my knowledge, taken from the Island City by any person on board the Westernport and not returned. I believe they were all returned.

Ans. to 20th Int. When I ascertained that the men who came in the R. B. Forbes were the crew of the bark, I did not conceal from them or decline to give up to them any article I had taken. I did nothing except to return the jacket in the way I have stated.

Ans. to 21st Int. I thought the bark and all on board were abandoned by the owners. We found a piece of a boat hanging to her davits, and we supposed the crew were lost.

Cross-Interrogatory.

Ans. to 1st Cross-int. I was not one of the officers or crew of the steamer Westernport when she undertook to tow the Island City into Hyannis. I was going to Boston in her as a stevedore, to discharge her there.

WILLIAM A. HALE.

Sworn and subscribed this 27th day of May, 1857, before me,

GEO. W. MOREL,
U. S. Com. South. Dis. of New York.

Deposition of Charles Hanel.

Charles Hanel, of the city of New York, aged thirty-two years, being duly sworn pursuant to the directions hereto prefixed, and examined on the part of the libellants, doth depose and say as follows, viz:—

Ans. to 1st Int. My name is Charles Hanel; I am thirty-two years of age; I reside in the city and State of New York; I work on the docks; I measured goods from Cromwell's line last winter, and am now a night watchman for that line.

Ans. to 2d Int. I was on board of the steamship Westernport at the time specified. I was hired by the month, and Cromwell sent me on to Boston to measure goods taken on board there.

Ans. to 3d Int. I went on board the Island City in the course of the first night after we found her—about 10 or 11 o'clock; we towed her some distance into shoal water, cast anchor, and then made her fast to the steamer; then I first went on board of her; the captain of the steamer and nearly all hands went along.

Ans. to 4th Int. Yes, nearly the whole of them from the Westernport went on board the Island City before I did; the mate was the first man on board, as I saw; then some of the others went to help hoist her anchor; I cannot name them, except Smith and Hale; those who went on board remained there till she was made fast alongside the steamer Westernport.

Ans. to 5th Int. I got from the Westernport on board the Island City over her rail after she was made fast to the Westernport; it was blowing pretty hard, and the sea rough.

Ans. to 6th Int. When I went first on board the Island City every thing on deck was lying upside-down; I saw a bale of cotton, sails, water-cask, rigging that was cut off the masts; in the cabin I saw some clothes, bed-clothes, trunks, a stove, and a clock hanging up; I did not go in the forecastle—never was in it.

Ans. to 7th Int. I saw some articles of clothing of the officers in the trunks in the cabin; the trunks were open and the clothes lying in them.

Ans. to 8th Int. Mr. Parker, first officer of the Westernport, first looked; I went into the cabin of the Island City; I was then on board the steamer.

Ans. to 9th Int. I cannot tell; I don't know who first went into the forecastle of the Island City; I never was in it.

Ans. to 10th Int. I saw some clothing in the cabin which I supposed belonged to the officers—it was in the trunks—the trunks were open; the bed-clothes were on a shelf; the clothing seemed to be thrown in the trunks.

Ans. to 11th Int. I saw some trunks standing in the cabin—I call them trunks—two or three standing on the floor; I went in and looked about, just to know how it was, and came out again.

Ans. to 12th Int. The chest or trunks that I saw were not touched —they were open.

Ans. to 13th Int. I did not open the chests or trunks, and no one else did in my presence, that I saw; they were already open.

Ans. to 14th Int. I did not break open any of the chests or trunks, and no one else did in my presence.

Ans. to 15th Int. I did not take anything at all from the Island City, except a drink of water.

Ans. to 16th Int. I took no clothing, or other articles, from the Island City.

Ans. to 17th Int. I took no clothing or articles, and had none to return.

Ans. to 18th Int. I took no articles or clothing, and had none to return.

Ans. to 19th Int. There were not any articles, to my knowledge, taken from the Island City by any person on board the Westernport and not returned.

Ans. to 20th Int. I had taken no articles from the Island City, and did not conceal or decline to give up any; I did nothing except what I have stated. After the R. B. Forbes came I helped get the Island City alongside the wharf at Hyannis.

Ans. to 21st Int. I did not take any articles; I thought the Island City had been abandoned when I heard that no one was found on board of her.

Cross-interrogatory.

Ans. to 1st Cross-int. I was not one of the officers or crew of the steamer at the time specified; I was going to Boston to measure freight she was to take on board there.

CHARLES HANEL.

Sworn and subscribed this 27th day of May, 1857, before me,

GEORGE W. MORELL,
U. S. Com. Southern District, New York.

Adjourned to one o'clock P. M., to-morrow, May 28.

May 28.—Witnesses not appearing, adjourned to ten o'clock A. M., to-morrow, May 29th.

Deposition of Charles F. O. Burke.

Charles F. O. Burke, of the city and State of New York, aged twenty years, being duly sworn, pursuant to the directions hereto prefixed, and examined on the part of the libellants, doth depose and say as follows, viz:—

Answer to 1st Interrogatory. My name is Charles F. O. Burke; I am twenty years of age; I reside in the city and State of New York; I am collector for Cromwell's line.

Ans. to 2d Int. I was on the steamship Westernport, in January last, at the time specified; I had charge of the cargo.

Ans. to 3d Int. I went on board after she was made fast alongside the Westernport; this was the first time I went on board the Island City; it was on the night of the 30th of January, after we lay to; we could not get into the harbor that night. The whole of us were on board; I think I went on board with the captain.

Ans. to 4th Int. The mate, two sailors, and Mr. Hall and Mr. Smith, also the cook's boy went on board the Island City, when we found her; they stayed on board till we made her fast alongside the Westernport; they went aboard eight or ten hours before I did.

Ans. to 5th Int. I stepped on board the Island City from the Westernport; the weather was quite calm at that time, but the sea was rough.

Ans. to 6th Int. There was some canvas, which looked like spare sails, lying round the deck, some sticks of wood; did not notice anything else particularly; I went into the cabin and things were turned upside-down a good deal; I saw the lids of chests loose, one was raised up when I went in; by loose I mean unlocked; I saw them tried, the lids were raised and I saw what appeared to be clothes inside; the clothes were not laid in with any care at all, but seemed to be thrown in most any way; I did not go in the forecastle—I was not in there at all.

Ans. to 7th Int. I saw clothing in the trunks, in the cabin, and jackets and pants hanging up in one of the rooms; I don't know whether it belonged to the officers or men; from seeing it in the cabin I supposed it belonged to the officers; I did not touch any of it, and did not notice anything particular about it.

Ans. to 8th Int. The first mate of the Westernport was, I think, the first who looked or went into the cabin of the Island City; he was the first person on board of her.

Ans. to 9th Int. I do not know who from the Westernport first looked or went into the forecastle of the Island City; it was not I.

Ans. to 10th Int. I don't know of any clothes I saw more than I have already spoken of—that is the clothing in the trunks, or chests, in the cabin, and what was hanging up in the state-room. The clothing lay in the trunks loose—most any way; I did not notice anything particular about it, or that hanging up.

Ans. to 11th Int. I found some trunks or chests in the cabin—do not remember how many—I should think half a dozen; I did not go in the forecastle.

Ans. to 12th Int. They were not locked when I saw them—not any of them I think.

Ans. to 13th Int. The lids of one or two of the chests or trunks, in the cabin, were raised—just raised and closed again—by the first engineer of the Westernport, Mr. Bergen; he went aboard the same time I did; they were not locked.

Ans. to 14th Int. I did not, nor did any one, in my presence, break open any of the chests or trunks.

Ans. to 15th Int. I took a book from the Island City; the title was the "Watchman," a novel—cheap publication—it belonged to the mate, nothing else.

Ans. to 16th Int. I took nothing but the book of which I have spoken; I took it to read—I had nothing else to do. When I met the mate afterwards, at Hyannis, I told him I had it and would return it; he told me to keep it, and read it, and I could return it any time in Boston. I did not see him again in Boston, and did not return it.

Ans. to 17th Int. I only took the book, of which I have spoken; I did not return it, because I did not see the mate in Boston.

Ans. to 18th Int. I did not return the book, because I did not see the mate in Boston; it is at his disposal at any time; I have taken good care of it, and have it yet.

Ans. to 19th Int. There were not any articles, to my knowledge, taken from the Island City, by any person on board the Westernport, and not returned—except the book taken by me, and not returned, for the reason I have stated; it is now in my possession.

Ans. to 20th Int. When I ascertained that the men who came in the R. B. Forbes were the crew of the bark, I did not conceal from them, or decline to give up to them, any article I had taken; I had taken nothing but the book of which I have spoken. When I met the mate of the bark I told him I had the book, and would return it to him; and he told me to keep it, and read it, and return it to him in Boston. The bark was anchored about a quarter of a mile from us, at Hyannis; the Forbes went directly to her; I went over to her, with the mate of the Westernport, and there I saw the crew of the Island City. The mate of the Island City came on board the Westernport, to dinner, and I told him I had his book—as I have stated. When I first went on board the Island City, I did not stay there—I only went there to look around.

Ans. to 21st Int. At the time I took the book I supposed the bark, and all on board, had been abandoned by the owners; there was nobody on board, and we saw a small boat w as swamped beside her.

Cross-interrogatory.

Ans. to 1st Cross-int. I was supercargo of the Westernport when she undertook to tow the Island City into Hyannis.

CHARLES F. O. BURKE.

Sworn and subscribed this 29th day of May, 1857, before me,

GEORGE W. MORELL,

U. S. Com. Southern District New York.

Deposition of Edward Doneley.

Edward Doneley, of the city of New York, sailor, aged twenty-six

years, being duly sworn pursuant to the directions hereto prefixed, and examined on the part of the libellants, doth depose and say as follows, viz:—

Answer to 1st Interrogatory. My name is Edward Doneley; I am twenty-six years of age; I reside in the city and State of New York; I am a sailor.

Ans. to 2d Int. I was on board the steamship Westernport at the time specified, as a seaman before the mast.

Ans. to 3d Int. I went aboard the Island City to help heave up the anchor; I was the fifth man aboard; I went in the boat, with the mate, at the first going off, but did not go aboard at that time—I stopped in the boat to run the line from the Island City to the steamer—we passed the line first, and then went back for more men. Two stevedore's men and the cook's boy came in the boat, and went aboard the bark just ahead of me.

Ans. to 4th Int. The mate and one sailor, two stevedore's men, and the cook's boy went aboard before me. The mate's name was Parker; the stevedore's men were named Smith and Hall; there was a fisherman too, named Lynn, I think; I don't know the name of the cook's boy; he was a colored boy.

Ans. to 5th Int. When the mate went to the bark, I and another man went in the boat with him. The mate and the other man went aboard and I remained in the boat. I was dropped astern of the bark to the steamer to pass a line; the line was made fast to the steamer; the two stevedore's men, one fireman, and the cook's boy got in the boat; we hauled back to the bark and they went aboard ahead of me. I went aboard last, the cook's boy was behind me, the others ahead.

Ans. to 6th Int. When I got aboard the bark, I went to look right away for a shift of clothes; I was wet from being in the boat. I went straight to the forecastle; I saw a lot of old clothes lying in the forecastle, lying on the floor; there were three chests there, and they were open; the lids were raised of two, the lid of the other was down, but not locked; that was all I noticed. I took a shift of clothes, all except the pants, and put them on me. Afterwards I went in the cabin, after we got up the anchor; I saw one chest, a bright-colored one, in the cabin; the lid was down; I don't think it was locked; I saw the mate raise the lid; I did not notice any other trunks in the cabin; I saw one in the state-room; I took a pair of pants there to shift myself, could get none in the forecastle; when the mate lifted the lid of the chest, he said he wanted to see where the bark was from.

Ans. to 7th Int. When I went down into the cabin, I found a pair of old pants in the state-room; I saw some clothing in the captain's chest, when the mate opened it; after he had done looking at the papers, I took out a pair of drawers. While the mate was overhauling the papers, I saw him come across a piece of waste paper, and

there was some money in it; I saw him hold out the money in his hand; could not say how much was in it. I lifted the lid of a chest in the forecastle, the others were open. The clothing I saw was some oil-skin coats, some old pants, some old blue shirts, some bedding blankets; that is all I saw there; the clothing was all damp.

Ans. to 8th Int. The mate and the seaman who first went in the boat with me were the first on board; they were by themselves till I returned in the boat with the two stevedore's men, the fireman, and the cook's boy. I don't know whether they went in the cabin or looked in; I was astern in the boat, I could not see; I don't know who first looked in or went in.

Ans. to 9th Int. The cook's boy was the first one I saw go into the forecastle; he was down there when I went down, he was in there when I went in. When I went aboard, I went forward to the top-gallant forecastle to look over her bows, to see what held her; after that, I went into the forecastle to shift myself; the floor was chock up full of old clothing, tarpaulins, and southwesters; some of the bedding was hauled out on the floor; I counted three chests, all I took notice of; two of the chests were open; the other the lid was down, it was not locked; the clothing in the chests was all tossed up; the cook's boy was overhauling one of the trunks; I believe there was a bag in it.

Ans. to 10th Int. I found clothing in the cabin that I supposed belonged to the officers; one of the chests was opened by the mate; I did not know it was open till that time. The mate found some money in the till of the chest, in a piece of waste paper. I think they were five dollar gold pieces and some silver; he showed it out in his hand, and counted it; I think there was about twenty dollars, but don't remember. I found a pair of pants in the state-room; I put them on. The clothing in the forecastle I suppose belonged to the men; it was in the chests and scattered about the floor, and was mostly damp.

Ans. to 11th Int. I saw only the captain's chest in the cabin, a small trunk of nuts in the state-room, and three chests in the forecastle.

Ans. to 12th Int. Neither the chests nor trunks were locked when I saw them.

Ans. to 13th Int. The mate lifted the lid of the captain's chest in my presence, as I have before stated, and I lifted the lid of one of the chests in the forecastle; the others I saw were open.

Ans. to 14th Int. I did not break open any of the chests or trunks, and no one did in my presence.

Ans. to 15th Int. I took a blue flannel shirt, an inside shirt, from the forecastle, one pair of drawers, what they call Canton flannels, from the captain's chest, and a pair of pants from the state-room.

Ans. to 16th Int. I was wet and froze, and I took the clothing to shift myself; when the crew came aboard at Hyannis, I returned them.

Ans. to 17th Int. I returned all the articles taken by me, every mite; it was Sunday after we came into Hyannis; I staid aboard the Island City; the crew came aboard from the Forbes; looking about, they said they missed some of their clothing; I went forward into the forecastle with them; I told them whatever was lost would be all fetched back; some of them said they did not care, they had nothing to lose. Mr. Bergen and I went to our dinner aboard the Westernport, and one of the men (of the crew) of the bark went with us; then I gathered up all the clothes that I took, and some of the crew of the Westernport gathered up what they took; I tied them all in a bundle, and took them back to the bark when we returned from dinner.

Ans. to 18th Int. I returned all the articles taken by me.

Ans. to 19th Int. There were not any articles to my knowledge taken from the Island City by any person on board the Westernport and not returned.

Ans. to 20th Int. When I ascertained that the men who came in the R. B. Forbes were the crew of the bark, I did not conceal from them, or decline to give up to them, any article I had taken. I was on the bark; I met them at the gangway, and told them if they had lost anything the crew (of the Westernport) would bring it back; I told them what I had taken. This was Sunday. I returned all I had taken, and other clothing, as I have stated in my answer to the seventeenth interrogatory. When I got back to the bark, I hove the bundle on the deck; the men opened it, each one helping himself to what he said was his. The pair of pants I had were the carpenter's, he took them and carried them aft. The captain was not present; the second mate was there.

Ans. to 21st Int. I thought the whole crew had abandoned the bark and everything in her; we thought, by the way [the] ribs of the boat were hanging under the starboard counter, that the crew was lost.

Cross-interrogatory.

Ans. to 1st Cross-int. I was one of the crew of the Westernport, before the mast, when she undertook to tow the Island City into Hyannis.

EDWARD DONELEY.

Sworn and subscribed this 29th day of May, 1857, before me,

GEO. W. MORELL,
U. S. Com. South. Dis. of New York.

Deposition of Andrew Anderson.

Andrew Anderson, of the city of New York, aged thirty-two years, seaman, being duly sworn, pursuant to the directions hereto prefixed, and examined on the part of the libellants, doth depose and say as follows, viz:—

Ans. to 1st Interrogatory. My name is Andrew Anderson; I am

thirty-two years of age; I reside in the city and State of New York; I am a seafaring man, I am second mate of the steamship Westernport.

Ans. to 2d Int. I was on board the steamship Westernport at the time specified; I was second mate of the Westernport.

Ans. to 3d Int. I went on board of the Island City somewhere between twelve o'clock Friday night and four o'clock Saturday morning, that was my watch from twelve to four o'clock. She was then lashed alongside the Westernport, and I went on board to put fenders between the sides to prevent their chafing to pieces; this was the first time I went on board; one of the men went with me, his name was Ned.

Ans. to 4th Int. The mate, three men, two of the stevedores, the colored boy, and two firemen, went aboard before I did. I cannot remember the names of all.

Ans. to 5th Int. I got on board the Island City by stepping over her rail; she and the Westernport were lying side and side. It was pretty fine weather the first part of the night, afterwards it began to blow pretty hard about three o'clock; there was a heavy sea.

Ans. to 6th Int. I saw some old spars and a couple of cotton bales lying about on deck. I did not go in the cabin or forecastle.

Ans. to 7th Int. I did not. It was a dark night; I had a light to hang the fenders out.

Ans. to 8th Int. I do not know. Mr. Parker was the first one on board.

Ans. to 9th Int. I do not know.

Ans. to 10th Int. No, sir, I did not find anything.

Ans. to 11th Int. No, I did not. I never looked in the cabin or in the forecastle.

Ans. to 12th Int. I don't know anything about it.

Ans. to 13th Int. No, sir, I never saw any opened.

Ans. to 14th Int. No, sir, I don't know anything about them.

Ans. to 15th Int. No, sir, I never had so much as I could put on my finger.

Ans. to 16th Int. I did not take any.

Ans. to 17th Int. I took none, I had none to return.

Ans. to 18th Int. I took none, I had none to return.

Ans. to 19th Int. There were no articles to my knowledge, taken from the Island City by any person on board the Westernport and not returned. I did not see any taken; I saw some returned in Hyannis.

Ans. to 20th Int. I saw the crew of the Westernport send back some clothes to the Island City. I did nothing myself.

Ans. to 21st Int. I took nothing.

Cross-interrogatory.

Ans. to 1st Cross-int. I was the second mate of the steamer Westernport.

ANDREW ANDERSON.

Sworn and subscribed this 29th day of May, 1857, before me,

GEO. W. MORELL,
U. S. Com. South. Dis. of New York.

[Adjourned to 10 A. M. to-morrow, May 30th.]

Deposition of John Halstead.

John Halstead, of Yarmouth, sailor, aged twenty-one years, being duly sworn, pursuant to the directions hereto prefixed, and examined on the part of the libellants, doth depose and say as follows, viz:—

Ans. to 1st Int. My name is John Halstead; I am twenty-one years of age; I belong to Yarmouth, Nova Scotia; I sail out of New York; I am a sailor before the mast.

Ans. to 2d Int. I was a sailor aboard the steamship Westernport at the time specified.

Ans. to 3d Int. I went on board the Island City when we first saw her, when she was at anchor; the first mate and some of the men went with me.

Ans. to 4th Int. The mate went on board the Island City before I did; I went aboard at the same time with him, no one else; the other man stopped in the boat under the stern.

Ans. to 5th Int. I went from the Westernport on board the Island City in the lifeboat; the wind was not blowing very heavy, but there was a very heavy sea.

Ans. to 6th Int. There was nothing much on deck but old rigging, sails, and such like, water casks, two or three bales of cotton. In the cabin it looked pretty rough, there was some clothes there, some provision, dishes, some trunks or chests, three or four—I am not sure which—four, I think; that is all I saw. In the forecastle everything was turned up here and there, and was on the floor; everything looked dirty, there was four or five chests—five, as near as I can recollect; there was old clothes lying on the floor; some sailors' bags were there also—two, I think.

Ans. to 7th Int. I did not find any clothing of officers on board—I mean I did not take any—there was some in the cabin. I found some things of the men in the forecastle; they were in the chests and on the floor; I don't know what was in the bags—did not look in them.

Ans. to 8th Int. The mate went down into the cabin first, and I followed him—we went in about together. We saw some clothes, such as hats, shoes, and jackets, lying about the floor and on seats; some trunks and tables—the trunks were standing around the sides of the cabin. The mate and I looked down the companion-way into the cabin, before we went down.

Ans. to 9th Int. I was the first who looked and went into the forecastle of the Island City. There was clothing lying on the floor and chests, knocking round; some of the chests were bottom up; the clothing was old sea clothes, blue shirts and pants, and so on; there was some bedding in the bunks. There were four or five chests—five, I think; two of them were open, the lids were raised; the others were shut, but not locked.

Ans. to 10th Int. I saw some clothing of the officers on the floor and seats in the cabin, and there was clothing in the captain's chest; the lid of the chest was down when we went in; there was clothing in the other trunks in the cabin; the trunks were all shut but not locked—none of them; the clothing was clean—some new and some old; in the captain's chest the clothes were laid in smoothly, in the others they were thrown in not very snug. I found clothes of the men in the forecastle, some were on the floor, some in the bunks, and some in the chests. There was no money found when I was present. I was not present when the mate examined the captain's papers. We just raised the lids of the trunks, and did not look in them much.

Ans. to 11th Int. There were four or five trunks in the cabin—four, I think. There were five chests in the forecastle, as near as I can recollect.

Ans. to 12th Int. None of the chests or trunks were locked.

Ans, to 13th Int. The mate and I opened the trunks in the cabin; we lifted up the lids; they were not locked. I opened the chests in the forecastle—one or two were open—I opened the others; I lifted up the lids—they were not locked.

Ans. to 14th Int. I did not break open any of the chests or trunks; nor did any one in my presence. I don't know that any one did.

Ans. to 15th Int. I took two blue shirts, one under shirt, a pair of pants, a cap and vest, and a pair of drawers; nothing else.

Ans. to 16th Int. I took the clothing because I was wet in getting on board; I put them on after we got the anchor up; I returned them all after the bark was towed into Hyannis.

Ans. to 17th Int. I returned all the articles taken by me after the bark was in the harbor at Hyannis; it was Sunday when I returned them; I put them all in with things taken by the other men; I first tied them up in a bundle, which I put in with the other things; then we went aboard the bark, and each of the crew of the bark took what belonged to him.

Ans. to 18th Int. I returned all the articles taken by me.

Ans, to 19th Int. There were no articles to my knowledge, taken from the Island City by any person on board the Westernport and not returned.

Ans. to 20th Int. When I aacertained that the men who came in the R. B. Forbes were the crew of the bark, I did not conceal from them or decline to give up to them, any article I had taken. I

and the others said we would give up all we had of theirs. When the Forbes came there, I was aboard the bark; when she came alongside, they threw a line from the Forbes to make fast to the bark; the bark was then lying in the harbor at anchor, a little way from the wharf; they came alongside; the mate and I, and another man went aboard the Westernport; we went ashore and got some provision; then went to the bark, and the captain of the Westernport went with us; then we went back aboard the Westernport; this was Sunday—it was Sunday afternoon; I returned the clothes, as I stated.

Ans. to 21st Int. When I took the articles I supposed they had been abandoned by the owners. I supposed the crew were all gone —lost. I supposed so from the bark lying in such a state as she did.

Cross-interrogatory.

Ans. to 1st Cross-int. I was one of the seamen of the Westernport at the time she undertook to tow the Island City into Hyannis.

JOHN HALSTEAD

Sworn and subscribed this 30th day of May, 1857, before me.

GEO. W. MORELL,
U. S. Com. South. Dist. of New York.

Deposition of Edward Mullen.

Edward Mullen, of the city of New York, sailor, aged thirty years, being duly sworn, pursuant to directions hereto prefixed, and examined on the part of the libellants, doth depose and say as follows, viz:—

Ans. to 1st Int. My name is Edward Mullen; I am about thirty years of age; I hail from New York city; have no residence but this; I am a sailor.

Ans. to 2d Int. I was a sailor aboard the steamship Westernport at the time specified.

Ans. to 3d Int. I was aboard the Westernport till the bark was hauled alongside, then I went aboard the bark to put out fenders. Mr. Anderson, the second mate, went with me.

Ans. to 4th Int. The first mate, Mr. Parker, a sailor named John, and some six or seven, went on board to weigh her anchor—before I was on board. I staid aboard the steamer till the bark came alongside.

Ans. to 5th Int. The Island City was hauled alongside and I stepped right aboard; the weather was pretty rough; the swell was pretty heavy.

Ans. to 6th Int. On the deck I saw ropes and spars—one thing and another; I could hardly tell what there was, because it was night and pretty dark; could not see anything on deck without a lantern. I did not go in the cabin or forecastle at that time. Next morning I went into the forecastle to see if I could find a pair of

mits for my hands—did not find any. Things looked very miserable in the forecastle, clothes tossed about, and chests open. The cloth was old and wet; there were oil jackets and other sailors' clothing. The only time I was in the cabin was Sunday. After we were in Hyannis, I went to help haul her into the dock, and went into the cabin to get a cup of coffee. I did not notice anything but a sofa bed, it looked like, in one end of the cabin; our engineer was lying on it asleep; the rooms were all shut up.

Ans. to 7th Int. I found no articles of clothing of officers or men, only the clothing lying about in the forecastle.

Ans. to 8th Int. I don't know.

Ans. to 9th Int. I don't know.

Ans. to 10th Int. I saw no clothing but what I have stated, in the forecastle.

Ans. to 11th Int. I saw some chests in the forecastle, I should think five or six—could not say exactly. I don't remember any in the cabin.

Ans. to 12th Int. The chests were not locked, they were all open.

Ans. to 13th Int. I did not open any, and no one did in my presence.

Ans. to 14th Int. No, sir, the chests were open; the lids tossed back—some without any lids at all.

Ans. to 15th Int. I took nothing from the Island City.

Ans. to 16th Int. I took nothing.

Ans. to 17th Int. I took nothing, and therefore could not return anything.

Ans. to 18th Int. I took none and had none to return.

Ans. to 19th Int. There were no articles, to my knowledge, taken from the Island City by any person on board the Westernport, and not returned.

Ans. to 20th Int. I had not taken any, and had not any. I did nothing; I had nothing to do.

Ans. to 21st Int. I took nothing.

Cross-interrogatory.

Ans. to 1st Cross-int. I was one of the crew—a sailor.

EDWARD MULLEN.

Sworn and subscribed this 30th day of May, 1857, before me,

GEO. W. MORELL,

U. S. Com. Southern District of New York.

Deposition of Mary Jane Walsh.

Mary Jane Walsh, of the city of New York, aged twenty-one years, being duly affirmed, pursuant to the directions hereto prefixed, and examined on the part of the libellants, doth depose and say as follows, viz:—

Ans. to 1st Int. My name is Mary Jane Walsh; I am twenty-one

years of age; I reside in the city and State of New York; I am stewardess aboard the Westernport.

Ans. to 2d Int. I was on board the steamship Westernport at the time specified, as stewardess.

Ans. to 3d Int. No, sir; I was never on board of her.

Ans. to 4th Int. I was never on board; nearly all from the Westernport went aboard at different times.

Ans. to 5th Int. I did not go on board.

Ans. to 6th Int. I was never on board of her.

Ans. to 7th Int. I was not on board.

Ans. to 8th Int. I don't know. The mate was the first on board; I saw him from our cabin window.

Ans. to 9th Int. I don't know.

Ans. to 10th Int. I was not on board, and found nothing.

Ans. to 11th Int. I was not on board.

Ans. to 12th Int. I don't know anything about them.

Ans. to 13th Int. No, sir; I don't know anything about them.

Ans. to 14th Int. No, sir; I don't know anything about them.

Ans. to 15th Int. I took nothing.

Ans. to 16th Int. I took nothing.

Ans. to 17th Int. I had none, and none to return.

Ans. to 18th Int. I had none, and none to return.

Ans. to 19th Int. There were no articles, to my knowledge, taken from the Island City by any person on board the Westernport, and not returned.

Ans. to 20th Int. I had nothing, and did nothing.

Ans. to 21st Int. I took nothing.

Cross Interrogatory.

Ans. to 1st Cross Int. I was stewardess of the Westernport.

MARY J. WALSH.

Affirmed and subscribed this 30th day of May, 1857, before me.

GEO. W. MORELL.

U. S. Com. South. Dist. of New York.

Deposition of James Welsh.

James Welsh, of the city of New York, aged fifteen years, being duly affirmed, pursuant to the directions hereto prefixed, and examined on the part of the libellants, doth depose and say as follows, viz:—

Answer to 1st Interrogatory. My name is James Welsh; I am about fifteen years of age; I reside in the city and State of New York; I am working as a boy in a dining saloon.

Ans. to 2d Int. I was on board the steamship Westernport at the time specified—as cabin-boy.

Ans. to 3d Int. I was aboard of her about two minutes when she was lying alongside the Westernport; this was the only time I

was on board of her. Another boy (colored boy) in the kitchen went with me.

Ans. to 4th Int. I saw persons go aboard to get up the anchor; I did not know their names; I had not been long in the steamer, only about two months; I had not got much acquainted; the mate was one.

Ans. to 5th Int. The Island City was lying very close to us; I stepped aboard; it was pretty fair weather; I can't remember about the sea.

Ans. to 6th Int. The first thing I saw was water casks and cotton bales on deck. I did not go to the cabin, or to the forecastle.

Ans. to 7th Int. No, sir, I took no notice of any.

Ans. to 8th Int. I cannot say; I don't know.

Ans. to 9th Int. I don't know.

Ans. to 10th Int. I did not find anything or see anything of that sort.

Ans. to 11th Int. No, sir.

Ans. to 12th Int. I can't say; I did not see any.

Ans. to 13th Int. No, sir.

Ans. to 14th Int. No, sir, I don't know anything about them.

Ans. to 15th Int. No, sir, nothing.

Ans. to 16th Int. I did not take any.

Ans. to 17th Int. I had nothing.

Ans. to 18th Int. I had nothing.

Ans. to 19th Int. No articles, to my knowledge, were taken from the Island City by any person on board the Westernport and not returned.

Ans. to 20th Int. I did not take anything: I did not do anything.

Ans. to 21st Int. I did not take anything.

Cross Interrogatory.

Ans. to 1st Cross Int. I was cabin-boy of the steamer Westernport.

JAMES WELSH.

Affirmed and subscribed this 30th day of May, 1857, before me,

GEO. W. MORELL.
U. S. Com. South. Dist. of New York.

Deposition of Richard Carrick.

Richard Carrick, of the city of New York, aged thirty-five years, being duly sworn, pursuant to the directions hereto prefixed, and examined on the part of the libellants, doth depose and say as follows, viz:—

Ans to 1st Int. My name is Richard Carrick; I am thirty-five years of age; I reside in the city and State of New York; I am fireman to the steamer Jackson.

Ans. to 2d Int. I was on board the steamship Westernport at the time specified, as fireman.

Ans. to 3d Int. The first time I went on board the Island City was on Sunday evening, at Hyannis. I went aboard as a watch; the chief engineer and one of the sailors went with me.

Ans. to 4th Int. All the crew had been aboard before me, from time to time.

Ans. to 5th Int. I went aboard in a row-boat; it was blowing pretty fresh and cold, but little sea; we were in port.

Ans. to 6th Int. It was night; I did not notice anything on deck; I went right to the cabin. In the cabin were a stove, cooking utensils, a bag of nuts, some books. I took notice of nothing else, except a cat.

Ans. to 7th Int. I found no clothing.

Ans to 8th Int. I think it was the chief mate. He was the first man I saw go in from our ship.

Ans. to 9th Int. I cannot tell; I don't know.

Ans to 10th Int. I did not.

Ans. to 11th Int. No, sir.

Ans. to 12th Int. I don't know anything about them.

Ans. to 13th Int. No, sir.

Ans. to 14th Int. No, sir.

Ans. to 15th Int. No, sir.

Ans. to 16th Int. I did not take any.

Ans. to 17th Int. I did not take any—had none to return.

Ans. to 18th Int. I had nothing.

Ans. to 19th Int. No, sir; everything was returned, as I heard the boys speaking of.

Ans. to 20th Int. I had not taken any, but I heard the rest of the men say they were satisfied to give them up. I did not do anything.

Ans. to 21st Int. I took nothing.

Cross-interrogatory.

Ans. to 1st Cross-int. I was fireman of the Westernport when she undertook to tow the Island City into Hyannis.

RICHARD CARRICK.

Sworn and subscribed this 30th day of May, 1857, before me,

GEO. W. MORELL,
U. S. Com. South. Dist. New York.

[Adjourned to Monday, 10 A. M., June 1st.]

Deposition of Michael Burns.

Michael Burns, of the city of New York, sailor, aged twenty-four years, being duly sworn, pursuant to the directions hereto prefixed, and examined on the part of the libellants, doth depose and say as follows, viz:—

Ans. to 1st Int. My name is Michael Burns; I am twenty-four years of age; I reside in the city and State of New York; I am a sailor.

Ans. to 2d Int. I was on board the Westernport at the time specified, as a sailor before the mast.

Ans. to 3d Int. I went aboard the Island City with the other hands to help weigh anchor; there were Edward Doneley, the cook's boy, colored, one of the firemen, and myself. This was the third trip the boat made.

Ans. to 4th Int. The mate and one of the sailors went on board before me. They went in the first trip the boat made, and staid on board while the boat came back for more help; I don't know who went the second trip. When I got aboard there were two stevedores there, besides those I have mentioned.

Ans. to 5th Int. I got on board the Island City from the Westernport in the life-boat; we hauled aboard by a line; the weather was fine over head, pretty fresh breeze; the sea was rough.

Ans. to 6th Int. I saw on deck one boat, spars, sails, some rigging, and three cats; some cotton—can't say I saw any bales. I went into the cabin after the anchor was taken up; when I went in the mate and the men were there, belonging to the Westernport. I saw a large trunk standing near the stove; the top was strapped down—buckled down; the front was towards me; the mate was sitting near it. I saw a small trunk with some nuts in it; this was open. I went into the cabin to have some coffee; after that I went into the forecastle; there was a lamp there, lighted; it was after dark—some clothes lying about the floor—some chests standing open; I think four or five of them.

Ans. to 7th Int. I did not find any articles of clothing of the officers that night, nor any of the men's clothing, except what was lying about in the forecastle and in the chests—I did not see officers' clothing at all.

Ans. to 8th Int. I don't know.

Ans. to 9th Int. I don't know.

Ans. to 10th Int. I saw no clothing in the cabin or belonging to the officers; there were some books and a medicine chest there. There was clothing of the men's in the forecastle—some of it was on the floor and some in the chests; generally, it was old clothing, and some of it was wet.

Ans. to 11th Int. In the cabin I only saw two trunks, as I have said; that one near the stove, and a small one with nuts in it. In the forecastle there were four or five chests; they were open.

Ans. to 12th Int. The trunk with nuts in it was open; the large trunk near the stove was strapped; I could not say whether it was locked or not. The chests were all open.

Ans. to 13th Int. No, sir.

Ans. to 14th Int. No, sir.

Ans. to 15th Int. I took three flannel shirts, one pair of drawers —nothing else.

Ans. to 16th Int. During the night the hawser parted; I had been in the boat an hour and a half, if not more; I was wet and cold, and put on these clothes for a shift; I returned them when we got into Hyannis.

Ans. to 17th Int. I returned all of them in Hyannis. I stopped on board the bark, and when the crew came aboard at Hyannis, I brought the clothes up and gave them to the men that claimed them.

Ans. to 18th Int. I returned them all.

Ans. to 19th Int. There were not any articles, that I know of, taken from the Island City, by any person on board the Westernport, and not returned.

Ans. to 20th Int. When those who came in the R. B. Forbes came aboard, they went into the forecastle; they came up again, and asked me where were their clothes, and if I had any. I said I had some of them on. I showed them to them; the man I showed them to said they did not belong to him; I got my own clothes dry, and put them on; then brought up the others, and asked whose they were; I gave them to the man who claimed them. I did not conceal or decline to give up any article I had taken.

Ans. to 21st Int. I did. I supposed the crew were lost. I saw her quarter boat smashed on her starboard counter, and supposed they were swamped in getting into her.

Cross-interrogatory.

Ans. to 1st Cross-int. I was one of the crew of the Westernport.

MICHAEL BYRNES.

Sworn and subscribed this 1st day of June, 1857, before me,

GEO. W. MORELL,
U. S. Com. South. Dis. of New York.

Deposition of William R. E. Floyd.

William R. E. Floyd, of King's County, aged twenty-three years, engineer, being duly sworn, pursuant to the directions hereto prefixed, and examined on the part of the libellants, doth depose and say as follows, viz:—

Ans. to 1st Int. My name is William R. E. Floyd; I will be twenty-three the fourth day of June; I live in King's County, State of New York; I am a steamboat engineer.

Ans. to 2d Int. I was aboard the Westernport as second engineer at the time specified.

Ans. to 3d Int. I first went on board the Island City at night after she came alongside the Westernport—there were several went aboard about the same time—there was Capt. Berry, and chief engineer Burgen and several others. I don't remember who they were now. This was after we came to anchor, Friday night.

Ans. to 4th Int. The mate, one of our firemen, some of the crew and some stevedore's men went on board before I did—they went aboard to get up the anchor when we came up to the bark.

Ans. to 5th Int. She laid alongside and I went from our vessel right aboard of her; the weather was calm, the sea was running pretty high.

Ans. to 6th Int. On deck I saw rope, rigging, casks and the like of that. In the cabin I saw one or two trunks, books on the locker; that is all I remember seeing. I did not go in the forecastle.

Ans. to 7th Int. I do not remember seeing any clothing; the captain and engineer were in the cabin at the same time I was.

Ans. to 8th Int. That I could not tell, I don't know.

Ans. to 9th Int. I don't know.

Ans. to 10th Int. No, sir.

Ans. to 11th Int. I saw two trunks in the cabin, that is all.

Ans. to 12th Int. The captain or chief-engineer raised the lid of one of the trunks; it was not fastened or locked; I don't know how the other was.

Ans. to 13th Int. The captain of the steamer or chief-engineer raised the lid of one of the trunks; the other was not opened. It seemed to be the captain's trunk that was opened; it was in the cabin outside the state-room; nothing was taken from it as I know of; the lid was raised and put down again.

Ans. to 14th Int. No, sir.

Ans. to 15th Int. I did not take any clothing. I took a cat, fed it and returned it to the owner in Hyannis.

Ans. to 16th Int. I took nothing but a cat; I took it to feed it and keep it alive—I returned it.

Ans. to 17th Int. I took nothing but the cat and that I returned, in Hyannis; the mate of the bark came aboard the Westernport and I gave him the cat.

Ans. to 18th Int. I returned them all.

Ans. to 19th Int. No, sir; they were all returned as far as I have any knowledge.

Ans. to 20th Int. No, sir. I did not do anything but return the cat as I have stated.

Ans to 21st Int. I thought the bark was abandoned by the owners, but that clothing, the cats and such things were not—because there was nobody on board, and her spars were all gone. The men's property I considered their private property.

Cross-interrogatory.

Ans. to 1st Cross-int. I was second engineer of the Westernport.

WILLIAM R. E. FLOYD.

Sworn and subscribed this 1st day of June, 1857, before me,

GEO. W. MORELL,

U. S. Com. South. Dis. of New York.

[Adjourned to 10 A. M. to-morrow, June 2d.]

Deposition of Leonard Spanburgh.

Leonard Spanburgh, of Hoboken, New Jersey, engineer, aged twenty-two years, being duly sworn, pursuant to the directions hereto prefixed, and examined on the part of the libellants, doth depose and say as follows, viz:—

Ans. to 1st Int. My name is Leonard Spanburgh; I am twenty-two years of age; I reside in Hoboken, in the State of New Jersey; I am a steamship engineer.

Ans. to 2d Int. I was on board the Westernport, at the time specified, as fireman.

Ans. to 3d Int. I went aboard the Island City when we first went to her; two sailors and a small negro boy went with me—don't recollect the names.

Ans. to 4th Int. The mate and one or two, I believe only one, I am not quite sure, of the sailors went on board before I did.

Ans. to 5th Int. I got from the steamer to the Island City in a small boat; we were landed aboard; there was not much wind; pretty stiff breeze; a heavy sea rolling.

Ans. to 6th Int. I cannot say I saw anything on deck but her rigging, sails, and rope lying about; I did not go in the cabin till after dark, after we got the anchor up and got her under way, I saw some trunks and a chest there—that is, one or two trunks; don't remember anything else except ordinary cabin furniture, tables, chairs, and so on. I did not go in the forecastle at all.

Ans. to 7th Int. Yes; I found clothing in a chest and in a trunk in the cabin, and some money in the chest; the mate found the money, I think there was about thirty dollars, somewhere along there. The clothing was in good condition; that in the chest was folded up; in the trunk was a lot of nuts, and an old overcoat, and a pair of shoes.

Ans. to 8th. Int. I don't know who went into the cabin first or looked in; when I went there, we all went down together, after we got the anchor up; I was so cold, I could hardly speak.

Ans. to 9th Int. I could not say—don't know.

Ans. to 10th Int. I found clothing in the cabin in the chest and in the trunks, as I have stated, and a pair of boots in one of the state-rooms; also some money which the mate found in the chest.

Ans. to 11th Int. There was one trunk in the cabin, one partly in the cabin and partly in the state-room—this is the one that had the nuts in, and an old overcoat which I took. There was only one chest that I saw. I did not go in the forecastle at all.

Ans. to 12th Int. None of the chests or trunks that I saw were locked.

Ans. to 13th Int. The mate opened the chests—I think he raised the lid; he overhauled it; we all stood by. I don't know who opened the trunks; the trunk with nuts in had been tied with a rope,

the rope had been cut, and the mate asked who did it; no one knew, and he said it was a damned wrong thing to cut it anyhow.

Ans. to 14th Int. No, sir—and nothing else in the ship.

Ans. to 15th Int. I took an old overcoat, a shirt (an over shirt) a pair of stockings, a pair of drawers, and the black coat that they said belonged to the captain, and a pair of thick boots.

Ans. to 16th Int. I took the clothes to keep myself warm, I was so cold I could hardly speak; I put them on me, and returned them after we got into Hyannis. I took no other articles.

Ans. to 17th Int. I returned them all, in Hyannis, Sunday, I think; I sent them back by our chief-engineer.

Ans. to 18th Int. I returned them all.

Ans. to 19th Int. No, sir.

Ans. to 20th Int. At the time inquired of, I did not conceal or decline to give up any article I had taken; I told them what I had taken, and they said I did right; I could not stand the cold like the sailors, I was not used to it; I sent back all I had taken, by our chief-engineer.

Ans. to 21st Int. Yes, sir, I supposed them all abandoned by the owners; I thought so, because there was nobody aboard the ship, and she was in a bad condition for anybody to stay aboard of her.

Cross-interrogatory.

Ans. to 1st Cross-int. I was one of the firemen of the Westernport. LEONARD SPANBURGH.

Sworn and subscribed this 2d day of June, 1857, before me,
GEO. W. MORELL,
U. S. Com. South. Dis. of New York.

Deposition of P. S. Berry.

I, P. S. Berry, of lawful age to testify on oath, depose and say, in answer to interrogatories by D. W. Gooch, counsel for the Westernport:—

1st Interrogatory. What is your business or occupation, and how long have you been in said business?

Ans. My business is now, master of a steamboat from New York to Portland and back. I have been so engaged two years last June; I have been a sea captain for the last thirteen years in sailing vessels, till I took a steamboat as stated.

2d Int. Where were you in the last part of January and the first part of February, 1857, and how were you engaged?

Ans. The 21st day of January, I left New York for Boston, in the steamer Westernport; on the 22d day of January, I anchored in Tarpaulin cove, the wind being about north, a thick snow-storm, and blowing a gale; we laid there that night and the next day, the 23d. On the 24th, we got steam and got under way, and tried to get through the Sound, but, it being full of ice, we had to go back again

to Tarpaulin cove. The second day after that, I think, we left Tarpaulin cove to go round the south shoal of Nantucket Shoal. On account of the ice, we could not go through the Old Man, or Point Channel, and we steered south until four o'clock that evening, and we stopped, being blocked in there. At sunset there was no water to be seen from the mast-head, nothing but ice. I considered it foolish for me to undertake to get round the south shoals to Boston, for if I did I could not get into Boston, and I steered out again in company with the steamers H. B. Beach and the Totten, in whose company I had left Tarpaulin cove. After great exertions all night, we got into Tarpaulin cove again, about three o'clock in the morning, the 27th of January, Tuesday. We laid there until the 30th day of January, the Sound being full of ice, and it being impossible to get through. At half-past eight on Friday, we got under way again; the ice broke away from the north shore, and we proceeded through the Sound by the north channel; we kept on through the Sound, through fields of floating ice, working our way through. At noon, we discovered a light boat with a signal flying. I supposed she wanted assistance, and I proceeded immediately to her, going 10 miles off my course. I found she did not want assistance, and had her signal up to let the people of Nantucket know they were all well on board, as she had dragged some fifteen miles from her station. I then hauled my ship to her course again for Boston, and in a few minutes after that, I discovered an object as far off as I could discern with my naked eyes, bearing about southeast. I got my glass, and made it out to be the hull of a vessel dismasted. I immediately altered my course for her, and bore up to her. I found it to be the bark Island City, when I arrived to her. I then went to work to make arrangements to board her; I had hailed her, and found there was no one on board. I ordered my mate and two men to take the life-boat and go on board of her; the mate boarded her by a stern hawser she had over her stern for a steering apparatus, and suppose he could not board her alongside, she was rolling so heavily. After great exertions, the mate made out to get the other two men on board, by passing down a rope and hauling them up. There being a very bad sea, I tried three times in succession to get a hawser from my boat to the ship before I succeeded. I got fast to her, and then dropped twenty-four yards, I should think, astern of her, and held on to her by the hawser, it then being about two o'clock P. M. or a little after; Nantucket light bearing west by north, distance twelve miles as near as I could judge. I then went to work getting more of my crew on board the Island City, and the only way was by a slip line on the hawser, and sending one or two men at a time in the life-boat, hauling them backwards and forwards. In the course of about an hour, I had what men I thought sufficient on board. The mate hailed me, and asked me if he should slip the chain she was anchored with; I told him no, for we had parted one of our chains, and lost one of our anchors previously, in Tarpaulin cove; and I

wished to save the anchor of the Island City, if we could. The men on board the bark went to work heaving on the chain, and trying to get the anchor in. We succeeded in getting the anchor about seven o'clock, I should think, in the first of the evening. We found it to be a small kedge or stream anchor, as the mate did. After parting hawsers and lines, &c., and towing her stern first, and making fast to her several times, we made out to get her into Vineyard Sound. We anchored in the Vineyard Sound about two o'clock Saturday morning, at the point No. 1 on the chart produced to me, and marked A., E. G. L. by the commissioner.

I anchored there because I supposed I could not get into Hyannis harbor, that being full of ice, and the only harbor I thought I could get into, and I wished to wait for daylight to get in there. The wind was to the eastward, and looked like storming, as if we were going to have a snow storm; we made fast alongside of the bark, and set a watch. During the night, or towards morning, the first thing I heard was that some of the fasts had parted, the wind having breezed up to a gale, from the eastward. In parting her fast, the Island City's counter came down on and stove us all in; cut our house all down to the main deck; broke the main rail, and broke us all in for ten feet. We went to work from that time till nine or ten o'clock in the forenoon, when we got both vessels into Hyannis, in a thick snow storm; we towed the bark in; there was such a sea then it was impossible to take her into the wharf; I took her in as nigh the wharf as I dared to go, and then anchored her; in doing so I grounded my boat; she struck the bottom several times, but having a good head of steam on, I cast off, and went into the harbor, and anchored, and there we laid all that night, a heavy rain storm and the wind blowing fresh from the eastward. The gale lasted till morning; at daylight it began to moderate; at eight o'clock it was calm, and thick fog. I took a boat, and went ashore to see my family, and got home about nine o'clock. I left a good watch on board the bark to take care of her. I had not been there more than an hour when they sent word up to the house for me to come down, that the steamer R. B. Forbes had taken possession of the bark, and was alongside of her. I then went down on board of her again. I found the R. B. Forbes alongside of her when I arrived there, and the crew of the R. B. Forbes at work putting an anchor on board the Island City. I objected to that, and told them they could not put the anchor on board; that I considered it my property, and should take care of it till further orders. They omitted putting the anchor on board, and soon after cast off, and left the bark, as I requested. Her owner, Mr. Peirce, was on board the R. B. Forbes, and I also found on board her Mr. Bishop, our agent in Boston. On entering the cabin of the Island City, Mr. Peirce produced a bond from the underwriters on the Island City, that I might deliver up the bark into the hands of Capt. Morris. I declined to do so, as Mr. Bishop handed me a telegraphic despatch from H. B. Cromwell, our owner

in New York, or one of them saying: "Capt. Berry—You will please take no action about the matter till further orders from me." I was not to give her up to any one. Those were about the words, and the despatch told me to take her into some safe place at a wharf, and put a plenty of men on board of her to take care of her, and I should hear from him as soon as possible. Mr. Peirce and myself, and several gentlemen on board, took a boat and went on shore. Mr. Peirce and myself went in a sleigh to Capt. Sylvester Baxter's house. There I wished to consult Mr. Baxter about this bond and my duty, he being an older man. I told Mr. Baxter—Mr. Peirce being present—what Mr. Cromwell had telegraphed to me, and he told me, under those circumstances, I ought not to accept the bond till further orders from Mr. Cromwell; that I should always obey my employers. He also told Mr. Peirce it would make no difference to him, as it would be very imprudent in him to take the bark, and attempt to tow her round Cape Cod without a rudder or spars, &c., and Mr. Peirce concluded he would not attempt it, and agreed, with Capt. Baxter and myself, about hauling the bark into the wharf at high water, and making her fast in a safe place. He then asked me if I could find a carpenter, and get a rudder make for her. I told him if he would get into the sleigh with me we could go right to the carpenter. We did, and Mr. Peirce told the carpenter that if he would make a rudder, and send the bill to Boston, he would pay it. He then bid me good day, and went to the hotel. At six o'clock I went down to the bark with a gang of men, and hauled the bark in, or nearly in, to the wharf, and the next morning, when the tide was higher, we got her in, and secured her, and Tuesday evening I gave her up to Capt. Morris, on an order from our attorney; it was nine o'clock Tuesday evening I gave the order to Captain Morris for the bark.

3d Int. When was the rudder completed, and the other work, if any there was, finished on board the Island City?

Ans. Tuesday, I think.

4th Int. When did you leave Hyannis, and when arrive in Boston with the Westernport?

Ans. We left Hyannis Friday, the 6th of February, and arrived in Boston Saturday morning.

5th Int. Why did you remain in Hyannis until Friday, after giving up the Island City Tuesday?

Ans. Because it was a thick fog, and the Sound was full of ice. We could not see over five hundred yards, and it was reported from Boston that Boston harbor was froze, and Mr. Bishop had told me he would telegraph me as soon as there was a chance for me to get up the harbor. I had a despatch from him every day, and sometimes twice a day.

6th Int. Were you obliged to take coal on board at Hyannis? If so, when did you take it on board?

Ans. I was obliged to take coal on board at Hyannis, and took it on board Monday or Tuesday; we took it out of a vessel.

7th Int. Did any vessel speak you whilst you were engaged in getting ready to tow the bark? If so, what vessel, and where was she bound?

Ans. Yes, sir; two steamers spoke me while I was making fast to the Island City—the H. P. Beach, bound to Boston, and the Totten, bound to Portland.

8th Int. What was the state of the wind, the weather, and the sea, at the time you boarded the Island City?

Ans. The wind was northeast, and a seven or eight knot breeze a part of the time; the weather was clear then; there was a heavy sea rolling in from the eastward.

9th Int. State in what manner you tried to get a hawser from your boat to the bark.

Ans. By getting our bow close on to her, and heaving the hawser on board of her to the mate and two men.

10th Int. When your boat lay hold of the bark, whilst you were getting up the anchor, was she held up by being attached to the bark, or by keeping up steam on the boat?

Ans. We held on by the hawser, but when I saw a heavy sea coming, I would ring the bell to move her ahead a little, so as to ease the hawser; we found the bark was dragging when we were fast to her.

11th Int. Did your mate and men incur any dangers in boarding the Island City? and if yea, describe them.

Ans. The danger of the boat was in going up under her stern in such a heavy sea, and getting stove, by having her come down upon them, while they were getting on board; that was all the danger—staving the boat.

12th Int. Did you incur any risk or danger to your boat in going to the Island City, or the place where you first found her, and taking her from thence to Hyannis? if yea, describe the risk or danger.

Ans. Yes, sir; we were in great danger on getting the hawser on board, of injuring the Westernport—the bark rolling as she was; and incurred great risk of vessel, and cargo on board, to the value of eighty or ninety thousand dollars; the wind being eastward and coming on a storm, and the Sound full of drift ice, and no harbor that I was [in a] position of getting into, amongst shoals, &c.

13th Int. Why did you tow her stern foremost?

Ans. Because I could not get a hawser to her bow, she being at an anchor.

14th Int. Describe as particularly as you can, the damage done to the Westernport whilst you lay at anchor on Friday night.

Ans. The Island City's bow fast parted, and her bow swinging off then, brought the stern or quarter of the bark on to our house, and in rising up and down with the sea, she came down and stove us all in.

15th Int. Did you have any conversation with Capt. Stevens in relation to the Island City whilst you were in Hyannis? if yea, state the same.

Ans. He told me he considered it unsafe to stay on board his bark, and said he did not wish a man to expose his life in her; and he also told me he was glad I had saved the bark. And on Monday morning I saw him again, and he told me he had lost some money out of his trunk. I told him he had not, because Mr. Parker had taken care of it for him. He said he was glad to hear it was saved. He then received from Mr. Parker all he had, and said it was not all, and there seemed to have been two packages—one in the till of the chest, and one in the body of it. I asked him the amount, and when he told me, I told him that was the amount Mr. Parker showed me when he came on board the steamer. Mr. Parker found only one package. He asked me as to Parker's veracity; and I told him he had been two years with [me], and I was confident he had told all he had found or seen.

[Mr. Dehon, for respondents, objects to all testimony as to conversations between the deponent and Capt. Stevens.]

16th Int. Did Capt. Stevens say anything to you about the bark, as to whether he expected to see her again or not? if yea, state what he said.

Ans. I forget the words he said, exactly, but I think it was that he considered it doubtful if he ever saw her again, when he left her, or something to that effect.

17th Int. Did you have any conversation with Mr. Peirce, one of the owners of the Island City, whilst in Hyannis, in relation to the Island City, and what you had done for him? if yea, state what it was; and also any remarks, if any there were made by him, in relation to the same.

Ans. Yes, I had a conversation with him. I have stated that which took place on board the bark; but in going ashore in the boat we had a conversation together. He said he was very glad I had got her in and saved her; and said Capt. Morris had acted the old granny about the affair, and asked me if I would tow her round to Boston. I told him I could not, as I should go beyond my duty and responsibility according to the policies or bills of lading; that I believed, so far as I was acquainted with marine law, that we were not allowed when freighting, to tow vessels from one port to another. I told him I would do it if Mr. Cromwell told me. That is all, except the conversation that passed at Capt. Baxter's, which I stated.

17th Int. At whose suggestion did you go to see Capt. Baxter, and was Mr. Peirce present during the whole of your interview with Capt. Baxter?

Ans. I went at my own and Mr. Peirce's suggestion; he was present.

18th Int. Do you know of any money, clothing, or other articles,

being taken from the Island City by any person belonging to the Westernport, and not returned.

Ans. [Objected to.] No, sir; I know no more than the crew of the bark told me, that they had lost it; I had only their word for it.

18th Int. Did you hear any complaints from the officers or crew of the bark as to the loss of any articles? if yea, what, and what was done, if anything, in relation to the matter?

Ans. Yes, sir. The mate of the bark and the second mate told me they had lost some clothes. I immediately told my chief engineer man, who was on board the bark lying at the wharf, to go on board the Westernport and tell Mr. Parker to search the vessel, and if he found anything of that kind, to send it ashore at once. I did not see Mr. Parker till next day, when he told me he had sent everything he could find, being I believe some jackets the men had put on when heaving up the anchor, it being so cold, and the men having gone on board in their shirt sleeves. I asked the officers of the Island City if they had got all their clothes, and they said no. I asked what they had lost, and they went on to enumerate so many that no chest would hold them; and I knew they were not on board my boat, and I gave it up.

20th Int. Did your men who went on board the Island City to get her ready to tow, get wet in doing so?

Ans. Yes, sir.

21st Int. Was the Westernport running regularly between New York and Boston at this time, and in what time did she make a trip from New York to Boston and back to New York again?

Ans. She was calculating to run regularly two or three trips in ice times, while freight was good, and a trip from New York to Boston and back to New York, would take about five days.

22d Int. What in your opinion would have become of the Island City, if she had not been taken by the Westernport, wind, weather, and sea being as they were Friday night and Saturday morning?

Ans. I think she would have gone on to Nantucket, or some of the shoals.

23d Int. Who were on board the Westernport at the time when you took the Island City? Please give the names and capacity of each person on board.

Ans. Kingsbury E. Parker, first mate; Andrew Anderson, second mate; chief engineer, John Bergen; Mr. Floyd, second engineer; four sailors, whose names I don't know; and three firemen, and cook, and steward, and chambermaid, Mary Walsh; a clerk, sent here by Mr. Cromwell, and three stevedores.

24th Int. Were the clerk and stevedores a part of your crew or passengers from New York to Boston, and for what purpose were they coming to Boston?

Ans. They were put on board to help load the vessel and discharge, and I suppose were considered as crew. The clerk was coming to Boston to deliver a cargo and receive another. The three stevedores

were to aid the gang here in loading and discharging the ship, and carrying on the business.

25th Int. Did they have any duties to perform whilst making the passage?

Ans. No more than lending a hand to haul up anchor, and do what they were called on to do; they were under my control.

Answers to Cross-interrogatories by Wm. Dehon, Esq., on behalf of the Island City.

1st Cross int. What was the tonnage of the Westernport?

Ans. Four hundred and fifty-three tons and twenty-seven ninety-fifths, I think.

2d Cross-int. What was the capacity and power of her engines?

Ans. One hundred and seventy-two horse power, I think.

3d Cross-int. Was it single or double?

Ans. Single.

4th Cross-int. What was the size of the cylinder?

Ans. Thirty-eight inches, I think.

5th Cross-int. Did not the same cylinder which worked the engine also drive the air-pump or condenser?

Ans. Yes, sir.

6th Cross-int. What steam did you ordinarily use?

Ans. We ordinarily averaged about twenty-five pounds; our certificate allowed us to use thirty-three.

7th Cross-int. While at Tarpaulin Cove, were you ashore frequently?

Ans. We were ashore once a day.

8th Cross-int. Were persons daily or frequently aboard from the shore?

Ans. No, sir, none.

9th Cross-int. Did you have Boston papers on the Tuesday, Wednesday and Thursday, or Friday, before you left Tarpaulin Cove?

Ans. No, sir.

10th Cross-int. Had you any telegraphic communication from any person either of those days? If yea, how many, and from whom?

Ans. I had two from Mr. Bishop in Boston.

11th Cross-int. What were they?

Ans. That the harbor was still closed with ice, and no chance to get there.

12th Cross-int. Did you send any, and to whom, on either day?

Ans. I sent one to Mr. Bishop in Boston, and one to my wife at Hyannis.

13th Cross-int. Did you not hear at Tarpaulin Cove, that the Forbes had had the Island City in tow, and had left her at anchor to go for coal?

Ans. No, sir.

14th Cross-int. You have stated that the Beach and Totten were in your company; did not the captain of the Beach or of the Totten know this, and tell you of it?

Ans. No, sir.

15th Cross-int. Did you not hear, while at Tarpaulin Cove, something of the bark Island City? If yea, state particularly what.

Ans. The pilot of the Beach telegraphed to Hyannis to know the state of the ice, and he received an answer that the Sound was full of ice, and the R. B. Forbes was in the middle of the Sound with a bark in tow—her name I did not hear.

16th Cross-int. On what day was this message received?

Ans. I think on Saturday, Sunday, or Monday, or first of the week.

17th Cross-int. What information did you get from the light-boat, which you say you went to in your way from Tarpaulin Cove to Boston?

Ans. None, sir.

18th Cross-int. Did you make no inquiries of them about the Forbes or said bark?

Ans. No, sir.

19th Cross-int. Where was the light-boat when you spoke her?

Ans. I should judge eight miles from Nantucket Light north by south.

20th Cross-int. And was there no other communication between you than about the health of those on board?

Ans. No, sir.

21st Cross-int. Who first went aboard the bark from the Western-port?

Ans. Mr. Parker, the chief mate.

22d Cross-int. How many went on board in all, and who?

Ans. I think seven—the mate and three of the sailors, and three of the stevedores, I think.

23d Cross-int. Were the rest of the crew aboard the Island City, after you went with her into Hyannis?

Ans. Yes, sir.

24th Cross-int. Who did you put in charge of the Island City after you took her in tow, and while in Hyannis harbor?

Ans. Those I put on board remained on board till I got her to an anchor in the Sound. In Hyannis, the chief engineer and two men with him had watch of her.

25th Cross-int. At what time did you commence heaving anchor on board the bark before you started with her in tow?

Ans. I should think between two and three o'clock.

26th Cross-int. At what time did they get the anchor up?

Ans. Not far from six o'clock.

27th Cross-int. At what time did you get under way with her?

Ans. About seven.

28th Cross-int. Did not some other reasons than the fear of the

ice induce you to remain at Tarpaulin Cove from the 27th to the 30th?

Ans. No, sir.

29th Cross-int. Were you on the direct route to Boston when the two steamers spoke you, as you have stated, on the 30th January?

Ans. No, sir; I was at the bark, and had put my mate on board, when they spoke me.

30th Cross-int. How came they there?

Ans. They kept off, and run down to me to see if I wanted any assistance.

31st Cross-int. They knew then, did they not, that you intended to take the bark in tow?

Ans. I do not know; I suppose they thought we were trying to save her?

32d Cross-int. Did they not understand when you left Tarpaulin Cove that you intended to go for the bark?

Ans. Not to my knowledge.

33d Cross-int. Did you have no communication with them in regard thereto?

Ans. No, sir.

34th Cross-int. Did not the field ice move off from the north shore, mostly on Sunday and Monday, before you took the bark, and was not the ice after that mostly drift ice?

Ans. It was all drift ice from where we lay in Tarpaulin Cove to the west chop of Holmes Hole, and from there to Hyannis, it was frozen solid, and from there to Nantucket Point; the Vineyard Sound was solid ice, by the telegraph report.

35th Cross-int. Do you mean that on that Sunday and Monday, the ice in the Sound was solid, as you have stated?

Ans. Yes, sir, as far as I could see.

36th Cross-int. You say that in your opinion the bark, if left where you found her Friday night, would have gone ashore on the shoals, or on Nantucket; state what shoals, or what part of Nantucket.

Ans. She would have gone ashore on Saturday night, anywhere from Nantucket to Sankaty Head, and the Shoals, the Handkerchief, Great and Little Round Shoals, Old Man, &c.

37th Cross-int. On the Monday when you attempted to go from Tarpaulin Cove to Boston, how far did you proceed, how was the wind and ice? At what hour did you leave, and at what return?

Ans. We left about eight o'clock A. M., and proceeded about within five miles of Sankaty Head; the ice was very thick in some places, and in other places thinner; forty acres all solid—then floating ice; the wind was southwest and moderate; we returned about two or three in the morning.

38th Cross-int. Where was your residence in January, 1857?

Ans. In Hyannis.

39th Cross-int. Did not your policies and bills of lading permit you to assist vessels in distress, in your passages?

Ans. Yes, I think they did; I can't be positive as to bills of lading, I think the policies did.

40th Cross int. How far were you ahead of the other steamers when you reached the bark?

Ans. Fifteen miles; I could just discern their hulls; mere specks.

PHINEAS S. BERRY.

Deposition of Alexander Baxter, examined on behalf of H. B. Cromwell and als., June 18th, 1858.

1st Interrogatory. What is your age and residence? Have you followed the seas—and in what capacity?

Answer. I am sixty-two years old—reside at Hyannis; I have followed the seas about twenty-five years, in all capacities; twenty years as master.

2d Int. Have you of late years been observant of the state of things in the Sound and its channels, and of the courses of vessels there? and to what extent, and why?

Ans. I have. I am concerned in about twenty vessels which are constantly passing up and down the Sound, which has caused me to pay particular attention to the state of things there.

3d Int. Where were you in the latter part of January, 1857?

Ans. I was at Hyannis.

4th Int. Did you see the Island City.

Ans. I did.

5th Int. When and where, first?

Ans. I first saw her from my house, off the Horse Shoe—I think it was on a Wednesday—the same day in the evening of which the schooner got hold of her, or the day before—I'm not sure which.

6th Int. Describe her situation, and then give all that you know of her, until the R. B. Forbes took her.

Ans. She was, as I thought, lying at an anchor, with a flag flying in distress. Next day I saw her within six and a half miles of Hyannis harbor.

7th Int. Describe exactly the position, situation, and condition of the Island City when you first saw her.

Ans. She was lying, as I said before, as I supposed at an anchor —dismasted—with a signal of distress flying, without any spars, except a jurymast for a flag. She was about twelve miles from Hyannis, to the eastward of the Horse Shoe.

8th Int. At what hour of the day did you first see her there?

Ans. It was about ten o'clock A. M.

9th Int. What did you then do?

Ans. I took my horse and sleigh and went up street, to where the people of the village generally congregate, and reported the situation of the wreck.

10th Int. What then took place?

Ans. The people talked it over and consulted, and got up a gang, and got Capt. Grey of the schooner Kensington, and went off to her.

11th Int. Are you a private underwriter on vessels?

Ans. I have been, and am. I was at that time.

12th Int. What did the schooner Kensington do?

Ans. I don't know of my own knowledge—only from report.

13th Int. When did you next see the Island City?

Ans. The next day, I think, about one or two o'clock P. M.

14th Int. Where was she then? State her position, and situation and condition then.

Ans. She was about six miles from Hyannis, off the northern part of the Horse Shoe. She appeared to be at anchor. She was alone there; she was in the north channel.

15th Int. What next happened to her, to your knowledge?

Ans. The next I knew of her, I saw the Forbes go to her on Saturday.

16th Int. State all you know that followed, with dates.

Ans. I saw the Forbes go to her and take tow to her—I didn't see her again until next morning—Sunday—I then saw the Forbes going out of Hyannis with her.

17th Int. At the place you saw her Sunday morning, was she in safety, or how otherwise?

Ans. She was under way when I saw her; she was safe.

18th Int. What part of the harbor was she in, when you first saw her Sunday morning?

Ans. Just inside of Great Rock, in the outer part of the harbor.

19th Int. Did you see her in the harbor, before the R. B. Forbes took her out?

Ans. No.

20th Int. When did you next see her after the R. B. Forbes took her out of Hyannis?

Ans. I saw her that afternoon—this was in the morning, and I saw her again in the afternoon of that day.

21st Int. State all you saw of her Sunday and Monday.

Ans. Sunday, I saw her in the morning going out of Hyannis. I saw her going along towards Nantucket shoals, during Sunday afternoon. She appeared to be very much bothered in the ice. Just at night was the last time I saw her with the Forbes. On Monday, I didn't see her.

22d Int. Do you know why the Forbes took her out of a place of safety, Sunday morning? (Objected to.)

Ans. No; I don't know why she did.

23d Int. Was there any reason why the Forbes should take her out of Hyannis, Sunday morning, to your knowledge?

Ans. None to my knowledge.

24th Int. Describe the state of the ice, and weather in the sound on Sunday the 25th.

Ans. It was pleasant weather. The sound was full of ice, so that a sailing vessel couldn't pass. There were no vessels moving.

25th Int. Describe particularly how the Forbes and Island City got along in the ice, on Sunday.

Ans. They made very slow work in getting along; they could have gone in an hour and a half with the sound clear, as far as they did in the time I saw them, the whole day.

26th Int. When and how did you first learn that the Forbes had left the bark off Nantucket?

Ans. I think it was on Wednesday, by telegraph from Provincetown.

27th Int. When did you next see the bark, and where?

Ans. At Hyannis, on the next Saturday.

28th Int. Where lying, and in charge of what vessel?

(Objected to, for form.)

Ans. Lying at Hyannis, in charge of the Westernport, Captain Barry.

29th Int. Please to state how the sound was as to ice, on Monday the 26th, Tuesday, 27th, Wednesday, 28th, Thursday, 29th, and Friday the 30th.

Ans. It was full of ice on Monday, and on the other days mentioned, so that no sailing vessels could pass.

30th Int. How was the weather irrespective of ice, from Monday 26th, to Friday, 30th?

Ans. It was pleasant weather—mild for that season.

31st Int. How was the weather, and what the appearances on the afternoon of Friday, the 30th?

Ans. The wind had got round southeasterly, and there was all the appearance of a storm; in the morning, it was southwesterly.

32d Int. Suppose this bark to be lying dismasted, with no one on board—rudder gone—at a 700 or 800 pound anchor, off Great Point, on the afternoon of Friday, 30th. Would she, or not, be in peril? And why?

Ans. She would be in peril, because she was exposed to the whole rake of the Western Ocean, and surrounded by shoals on the north and south, and in every direction except east. To the east was the channel out, and to the west was Nantucket.

33d Int. How did the weather turn out Friday evening and Friday night and Saturday morning?

Ans. A gale of wind from southeast.

34th Int. How was the south channel as to ice and the passing of vessels, during the week, from Monday, January 26th, to Monday, February 2d?

Ans. There was no passing in the south channel; the south channel was blocked up with ice.

35th Int. Do you know of any vessels passing the south channel that week?

Ans. I don't.

36th Int. In the then state of the ice and weather, what possibi-

lity was there that a vessel would come in sight of the Island City, as she lay that week?

Ans. There was no possibility of anything coming within sight of her, since they couldn't pass.

37th Int. In this state of the ice and weather, which channel is most used, the north or the south channel?

Ans. The north channel is most used in icy weather, because the ice kedges to the leeward. Northerly winds prevail, and the south channel becomes filled up.

38th Int. In which channel would a vessel be more likely to be seen and relieved, in an icy winter?

Ans. As the ice was that winter, they would be more likely to be seen in the north channel, because vessels couldn't get into the south channel—they couldn't pass.

39th Int. Suppose this bark to be lying at a 700 or 800 pound anchor off Great Point, and no one on board, do you or not, as a nautical man, think she would have ridden out the night of Friday, January 30th, and your reasons?

Ans. I don't think she would. There was a heavy sea heaving in—she had the whole rake of the Western Ocean, as I have stated. We was calculating that we should pick her up next day on the beach or shoals, if nothing had taken hold of her previous—if the Forbes hadn't got back—and we should have a chance to wreck her again. That was the talk on the evening previous: that was the talk—that we wouldn't insure upon her for fifty per cent. That was Friday evening.

40th Int. Why could she not ride out Friday night there as well as the four previous days and nights?

Ans. A gale of wind was the reason. The four previous days and nights there was pleasant weather, with an off-shore breeze and smooth sea.

41st Int. [Objected to.] Was your attention drawn to the subject of the ice and weather Friday afternoon? and how generally was the attention of others drawn to it?

Ans. My attention was drawn to it at the time by her being the general subject of conversation, in consequence of the Forbes leaving her.

42d Int. Was any effort made to go to her relief from Hyannis, Friday afternoon? And if not, why not?

Ans. There was none, because we couldn't get out of the harbor on account of the ice, and couldn't get through the Sound, if we had, on account of the ice. The Sound was blocked up with ice.

43d Int. If the steamer Westernport had not run down to her, do you know of any means or chance of her relief Friday afternoon or night? If so, what and whence?

Ans. I don't know of any.

44th Int. [Objected to.] How many vessels were in Holmes's Hole during this week, from January 26th to January 31st?

Ans. I don't know. I know by the newspapers that there was a large fleet there. I don't know the number.

45th Int. Please look at the chart marked by the magistrate, and at point "X" at the southeasterly end of the Horse Shoe. How does that correspond with the place you saw the schooner Kensington take the bark?

Ans. I couldn't tell within a mile or two. It was about there.

46th Int. How does point "X" compare with point "A" as a place of safety or peril for a vessel at anchor at this time, with crew on board?

Ans. I should think they were about the same.

47th Int. Place the bark at point "C," off Great Point—suppose the bark to be lying there with crew on board, and just in the same condition as at "A" or "X," with the same anchor, crew, &c., and the same weather. How does "C" compare with "A" or "X" as a place of safety or peril to the vessel, at that season?

Ans. It does not compare at all. At point "X" and "A" the captain and crew were willing to stay by the ship, feeling themselves safe. At "C" they didn't feel themselves safe, and didn't give themselves time to take their money or clothes from the ship—neither would the Forbes allow them time to do so. Capt. Stevens, of the bark Island City, told me so. I boarded his vessel when he got back to Hyannis. The points "A" and "X" were places of safety where I would be willing to risk myself, or any other nautical man would; but I wouldn't at "C" with her ground tackle.

48th Int. Suppose the bark to have the same 700 or 800 pound anchor at each place—"A," "X," and "C,"—please compare them as places of safety or peril. Give your reasons.

Ans. In all seasons except icy times, it is considered very good harbor at "X" and "A"—that is, safe harbor for any vessels. We don't consider the point "C" to be any harbor at all, any more than any place in the Western Ocean, nor so much. If I have a good berth in the Western Ocean, clear of shoals, I am safe. And a stronger reason than all the rest is, that at the point "C" there is such a sea, in case of a gale, that a vessel can hardly live. The sea would be tumbling in upon you in all directions.

49th Int. How does "C" compare with "X" and "A," in respect to the possibility of a dismasted vessel being seen and relieved in season by passing vessels, at such a time as this?

Ans. There is no comparison, because, when the Sound is full of ice, what few vessels can pass go through the north channel. The few vessels that could pass, then, went that way. I hardly think that vessels passing through the north channel would see her at all at "C." At that time there were none passing through the south channel.

50th Int. If she parted her cable, or struck adrift at "C," what were her chances of loss or escape at this time?

Ans. The prospect was good to go on the shoals. With the wind

directly west, she would have gone to sea. With the wind in any other direction, she would go either on the shoals or on the eastern part of Nantucket.

51st Int. How much are you in the habit of observing weather and vessels in the Sound? How often have you been in the habit of going to the light-house, or other places, to look out for that purpose?

Ans. It is a daily occurrence with me, when at home, to look out at the Sound. My observatory gives me a clear view of the Sound, from Nantucket Shoals to the Vineyard.

52d Int. How much have you used this observatory the last few years?

Ans. Daily, when at home.

53d Int. Did you see Captain Stevens, of the bark, after she came into Hyannis?

Ans. I did.

54th Int. Did you have a conversation with him? If so, when? Where? Who was present?

Ans. I had, on board the bark, on Monday after she returned, Feb. 2d. There were a dozen persons present; the engineer, Mr. Bergen, was on board, present; Capt. Stevens's son-in-law, Capt. Cornish, was present. There were several other Hyannis men present, whose names I don't now recollect.

55th Int. Please state all that was said at this time. Give it as nearly as you can in its order.

Ans. I asked Capt. Stevens about their getting down over the shoals with the steamer Forbes, and why the Forbes anchored her there. He said it was because they couldn't manage her—there was so much ice, they were afraid of being short of coal. I asked him why he left. He said he didn't feel safe to stop on board with that ground tackle, out there. He said the Forbes sent a boat alongside. I asked him why he didn't take his money and clothing when he was going to leave her—why he left everything in the position he did. He said they hurried him so that he didn't have time to get his things out. That was all the conversation that I recollect now on this subject.

56th Int. Are you or not sure that he said the Forbes sent a boat alongside?

Ans. I am sure that I understood him so.

57th Int. [Objected to.] Did he say "the boat came alongside" —or use the word "boat" alone? Or did he say the boat of or from the Forbes? Do you remember how this was?

Ans. I don't remember.

58th Int. Did Captain Stevens say anything to you as to who saved the bark?

Ans. No.

[Adjourned to June 19, at 1 P. M.]

June 19th.

Cross-interrogatories propounded on behalf of Jos. H. Adams. President, &c., and on behalf of Claimants, and answers thereto.

1st Cross-int. Were you at Hyannis from the 21st of January, 1857, during the rest of the month?

Ans. I was.

2d Cross-int. Did you keep any record of the wind, weather, ice, and sea, during that time, or do you testify merely from recollection?

Ans. I testify merely from recollection.

3d Cross-int. When did the schooner, which you have stated went out to the bark from Hyannis, return?

Ans. She returned in the night of the same day she went out, Wednesday, I think. I didn't see her come in.

4th Cross-int. Why did she not go back again to the bark, and bring her in on Thursday and Friday?

Ans. The ice blocked her in. There came on a very cold snap and froze her up, so that she couldn't get out.

5th Cross-int. Do you mean to say it was impossible for a vessel to get through the ice in the harbor?

Ans. She was so far in the harbor that it was impossible for her to get out.

6th Cross-int. Could she have got out Friday or Saturday? How soon could she have got out?

Ans. She could not. She might have got out, probably, on Sunday or Monday.

7th Cross-int. About how thick was the ice, and how far out did it extend?

Ans. So that people could walk to and from the schooner on it. I didn't go on the ice. Outside of her it was broken in. The ice extended across the Sound. It was solid only about a mile from the shore—to just outside the breakwater.

8th Cross-int. Cannot a vessel break its way through ice only thick enough to bear a man?

Ans. Not when she is ice-bound. By having a boat ahead with men enough in it to cut a track, she can go through, if the weather is not too cold.

9th Cross-int. Then this schooner might have got to the bark again if she had taken pains to send a boat and crew to break away, might she not?

Ans. Not at the time the bark laid there. Part of the time it was blowing heavy, and it was not practicable to go.

10th Cross-int. Was it the ice or the wind which prevented the schooner getting out to the bark on Thursday and Friday?

Ans. Ice and wind both.

11th Cross-int. Then you do not mean, as stated in your answer to the 42d direct interrogatory, that she could not get out on account

of the ice alone, and that she could not get through the Sound on account of ice?

Ans. Yes. I mean that she couldn't get through the Sound, on account of ice alone, at that time. No vessel could get through the Sound then.

12th Cross-int. Could she get from Hyannis to the bark?

Ans. Not on Thursday and Friday, on account of the ice.

13th Cross-int. How was the weather on Friday, January 23d, 1857?

Ans. It was moderate weather to what it had been, as to wind, but cold.

14th Cross-int. How cold, as compared with a day or two previous?

Ans. Not so cold as a day or two previous, but very cold.

15th Cross-int. You are certain Friday, the 23d, was not so cold as the Thursday and Wednesday before, are you?

Ans. I am.

15th Cross-int. As certain of this as anything you have stated?

Ans. I feel as confident of it as of anything that I have stated.

17th Cross-int. You have stated that there was no vessels moving in the Sound on Sunday, January 25th, Monday the 26th, &c. Were there not vessels adrift?

Ans. No sailing vessels that I saw.

18th Cross-int. How far could you see from your observatory at that time?

Ans. I could see a dozen miles.

19th Cross-int. And you are certain, are you, that there was no vessels adrift within that distance from you?

Ans. I have no recollection of seeing any on Sunday or Monday.

20th Cross-int. Did you take observation on those days as carefully as you say is your usual custom?

Ans. I did. Probably I wasn't as particular on Sunday as I was on Monday.

21st Cross-int. You have testified to seeing the bark in tow of the Forbes several times on Sunday. Would you not then have seen and noticed vessels adrift, if there were any in your sight?

Ans. I think I should. I don't remember seeing any; but there might have been some that I didn't see.

22d Cross-int. Are you not as confident that there were no vessels adrift within your sight on those days as of any other facts you have testified to?

Ans. I couldn't say, because I can't recollect seeing any vessels on those days. I generally know most of the vessels that go through the Sound, having considerable interest in vessels.

23d Cross-int. Your confidence in your recollection then, is *not* such as to enable you to say you saw no vessels adrift, is it?

Ans. No. I couldn't say that I didn't see any; but I have no recollection of seeing any whatever.

24th Cross-int. Did you use a glass in your observatory?

Ans. I did—the usual spy-glass, such as are carried to sea.

25th Cross-int. How far from you is the Bishop and Clerks Light Station?

Ans. Pretty near six miles.

26th Cross-int. Did you see the Bishop and Clerks light-boat on Saturday, Sunday, or Monday—January 25th, 26th, and 27th?

Ans. I did, all three days. She was about six miles from my position, about south-southwest.

27th Cross-int. You saw her on her station each of those days, did you not?

Ans. In the neighborhood of her station. The ice moved her a little.

28th Cross-int. How much did the ice change her from her usual position on those days?

Ans. Perhaps half a mile or a mile. She dragged about a little. Afterwards the ice changed her position a good deal. She went ashore.

29th Cross-int. How long after and when was it she was carried away from her position and ashore?

Ans. I think it was the Friday night following. I'm not sure whether it was that Friday, or the week after.

30th Cross-int. You are sure she was not carried off on Sunday, the 25th, are you?

Ans. No, she wasn't carried away Sunday, I think. I feel confident of it.

31st Cross-int. Are you as certain of this as of anything you have stated?

Ans. Yes.

32d Cross-int. What set her adrift when she did go?

Ans. A southeast gale and the ice.

33d Cross-int. Do you mean to say the ice in the Sound, with such a wind as then was blowing, would carry a light-boat adrift?

Ans. Yes. Nothing else took her adrift.

34th Cross-int. Have not those light-boats very heavy moorings?

Ans. They have. She parted one of her heavy moorings.

35th Cross-int. Suppose, now, the bark Island City, with an 800 pound anchor and 110 fathoms chain out, had been lying at the point marked "A" on the chart, at the time the Bishop and Clerks light-boat was carried away, do you think she would have been safe?

Ans. No. I stated yesterday that if it hadn't been for the ice, they would both have been safe.

36th Cross-int. Do you think the captain and crew would have been willing to have staid aboard at that time and place?

Ans. I do.

37th Cross-int. Why do you think said bark would not have been safe at that time?

Ans. Because I think she would have stood a good chance of

going adrift. The ice was kedging in, and the wind blowing strong; it carried away the light-boat, and might have carried away the bark; she might have gone ashore on the flats, without damage, as the light-boat did.

38th Cross-int. You think, then, that a master and crew would willingly stay on board a bark, drifting about among the shoals in the sound, without spars or rudder, and with the ice as thick and heavy as it was then?

Ans. No, they wouldn't stay willingly; but they would stay there.

39th Cross-int. For what premium would you, as a private underwriter, have insured the Island City at the point "A," in the condition described, at the time the Bishop and Clerks light-boat went adrift?

Ans. For fifty per cent., or twenty-five.

40th Cross-int. You do not, then, think a vessel drifting about in the sound, in such weather, ice, and sea, in extreme peril, do you?

Ans. I think the position she was in when the light-boat went adrift was extreme peril. I don't consider a vessel in the sound drifting about, to be in extreme peril.

41st Cross-int. Could you see the bark at the place where she lay at point "C," off Nantucket?

Ans. No, not half way to her.

42d Cross-int. Do you know, of your own knowledge, how the ice and sea were at the point "C" on the chart, from Sunday, the 25th, to Friday, the 30th January, 1857?

Ans. I don't know how it was there. I know it was moderate westerly weather where I was, and it must have been the same there. It is only thirty miles off. I don't know how the ice was. I know it was drifting about in the sound. There must always be some sea at that place.

43d Cross-int. Then, when you speak of the comparative safety of the points "A" and "C," you do so with no personal knowledge of the actual dangers at "C," at that time, do you not?

Ans. I had no personal knowledge at that time, of course. I speak from general knowledge, not from actual knowledge.

44th Cross-int. Were you on the sound on Friday night, January 30th?

Ans. I was not.

45th Cross-int. In stating Captain Stevens's conversation as you have done, in your direct examination, do you give his precise remarks, or only your present recollection of them?

Ans. I give my present recollection of them—as near as I can recollect.

46th Cross-int. And does that enable you to swear that he said the particular things you have stated?

Ans. It does to the best of my knowledge.

47th Cross-int. Won't you, then, tell us particularly whether Capt.

Stevens said the Forbes sent a boat alongside the bark, when the men went from the bark to the steamer, off Nantucket?

Ans. I meant to say that he said the boat was alongside, and hurried them so that they hadn't time to take their things. That was Captain Stevens's statement.

48th Cross-int. Did or did not Captain Stevens make the remark referred to in the last interrogatory?

Ans. I couldn't say whether it was that the boat was alongside, or came alongside. What he said was, that the Forbes hurried them so that they couldn't get their things.

49th Cross-int. You mean to say, then, do you not, that you do not remember what Capt. Stevens said on that subject.

Ans. No, I don't mean to say any such thing. I mean to say that I do remember what he said.

50th Cross-int. If you *do* remember, please state, then, what he said.

Ans. That the boat was alongside, and they hurried them so that they couldn't have time to get their things and put them into the boat.

51st Cross-int. Then you will swear that he did *not* say the Forbes sent a boat alongside, will you?

Ans. No, I don't say that.

52d Cross-int. Are you as confident about this matter as about the rest of the conversation you have related?

Ans. I am confident that Capt. Stevens told me what I have stated, to the best of my knowledge.

53d Cross-int. Is your recollection as distinct about *this* as about any part of Capt. Stevens's conversation?

Ans. My recollection is distinct that Capt. Stevens told me that they hurried him so that he couldn't get his things into the boat.

54th Cross-int. Will you now answer the question, whether your recollection is as distinct about *this*—meaning thereby Captain Stevens's statement in regard to sending a boat alongside the bark, as stated in cross-interrogatory No. 51—as about any part of Capt. Stevens's conversation?

Ans. As I recollect, I stated that my remembrance was, that he said the boat was alongside, and hurried them so that they couldn't get their things in: that the Forbes hurried them, or they were hurried, so that they couldn't get their things.

55th Cross-int. Is your recollection of what Captain Stevens did say about the Forbes sending a boat alongside the bark as distinct as your recollection of any other part of his conversation?

Ans. No, I have no recollection of his saying that he sent a boat alongside the bark.

56th Cross-int. Do you remember what he did say about that?

Ans. That the Forbes hurried him so that he hadn't time to put his things into the boat.

57th Cross-int. Did he or not say anything else about a boat?

Ans. I don't recollect anything else.

Cross-interrogatories, propounded on behalf of the crew of the schooner Kensington.

58th Cross-int. What was the appearance of the weather at the time Captains Norris and Gray and their men went to the rescue of the bark?

Ans. It was pleasant weather when they went to the bark; it was winter time, when the weather changes pretty often.

59th Cross-int. Was there ice in the harbor, and how did they get on board the Kensington?

Ans. There was ice there. I don't know how they got on board.

60th Cross-int. How was the weather during that night and the next morning, if you know?

Ans. Blowing a gale of wind—a moderate gale.

61st Cross-int. How was the wind during that time, and what the changes, if any, if you know?

Ans. The wind was about west-southwest when they went out. It hauled to the northward and came *came* out with a squall, and blowed heavy.

62d Cross-int. Was the wind west or east of north any part of the time, if you know?

Ans. I should judge from the sound on the house in the night, that it was to the east of north.

63d Cross-int. How did the bark bear from the Horse Shoe, when you first saw her?

Ans. About east, southerly.

64th Cross-int. Supposing her to have been without anchors, what, in your opinion, would have become of her during that night?

Ans. She would have gone ashore on Muskeget, I should judge—or to sea.

65th Cross-int. Was she, or not, in a dangerous position, if without anchors?

Ans. She was in a very dangerous position, if without anchors.

66th Cross-int. Was, or not, the position of the Kensington and crew dangerous during that night, and especially the next morning, before she left the bark?

Ans. It was dangerous that night, of course. I don't know what time she left the bark. It must have been dangerous in the night with as much wind and as cold as it was then.

67th Cross-int. Did it snow during the time?

Ans. Yes; there were snow squalls from time to time.

68th Cross-int. Was the position of the bark, when the Kensington left her, better or worse than when she found her?

Ans. I should consider it a great deal better, because she was left with an anchor and a hundred fathom chain; before she was riding with her chain only.

69th Cross-int. Was she not more in the way of passing vessels in the latter place?

Ans. She was at that time of the year, because vessels could go through the north channel then, and not through the south.

70th Cross-int. Were not the bark and her crew in great peril, if they had remained as they were, off the Horse Shoe, during that night?

Ans. They were, because they had no anchor. They were liable to be blown on to the shoals, or to sea, or on to Muskeget.

71st Cross-int. Do you know what the crew of the Kensington did when they came ashore the next morning?

Ans. I do not.

72d Cross-int. Do you recollect whether it was squally and snowy at that time?

Ans. It was.

73d Cross-Int. Did you see the Kensington when she was coming into the harbor the next morning?

Ans. No. ALEX. BAXTER.

Deposition of Sylvester Baxter, Examined on behalf of H. B. Cromwell et als., June 19th, 1858.

1st Interrogatory. What is your age, and residence, and have you followed the sea? If so, how long, and in what capacity?

Ans. I am fifty-eight; live at Hyannis; I have followed the sea from the time I was twelve years old until within the last ten years, in all capacities, from cook to master—twenty-eight years as master.

2d Int. Have you of late been observant of the state of things in the Sound, and of the course of vessels there—and to what extent, and why?

Ans. I have been. It is natural for a man who has followed the sea, to look after ships, and weather, &c.

3d Int. Where were you the latter part of January, 1857?

Ans. In Hyannis.

4th Int. Did you see the Island City about this time? And if so, when and where?

Ans. I saw a wreck on or near the Horse Shoe, which proved afterwards to be the Island City.

5th Int. Describe her situation, and all you saw of her until the R. B. Forbes took her.

Ans. She was there for several days with a signal of distress flying. At length the schooner Kensington took her in tow, and brought her within four or five miles of the harbor, and anchored her near the light-boat. The Kensington then came into the harbor, and could not get to her again for several days. In the mean time the Forbes came and took her away.

6th Int. Did you see the Forbes take her? And if so, state what you saw the Forbes do with her?

Ans. I saw the Forbes come there, and saw her in tow of the

Forbes. I saw the Forbes trying to get her out of the ice. It was two days before she got her out of sight.

7th Int. Whither did the Forbes take her first?

Ans. Down towards the Point the first day, and then they drifted back again. On the second day, she disappeared with her, below the shoals.

8th Int. Did the Forbes take her into Hyannis harbor, or near to it? And if so, where?

Ans. They were very nearly in—I think the second day after she took hold of her.

9th Int. Look on the chart, and state at what point the Island City was when you first saw her.

Ans. Near the Horse Shoe.

10th Int. [Objected to for form.] Was she at or near the point marked "X," when you first saw her?

Ans. I couldn't say as to that exact point. She was in range of the Horse Shoe, and to the eastward of the range of the light-boat. We couldn't tell exactly which side of the shoal she was. We supposed that she had cut away her masts to prevent her from dragging on to the shoal.

11th Int. State at what point the Kensington left her.

Ans. Near the light-boat, to the westward of the Bishop and Clerks.

[Adjourned to June 21st, at half-past 10 A. M.]

June 21st.

12th Int. Describe the weather and the condition of the ice in the Sound on Saturday, Sunday, and Monday, the days that the Forbes had the Island City.

Ans. It was good weather, except that it was cold. The ice was pretty stiff—not so much so as it had been—but so that vessels could not get out of Hyannis.

13th Int. How was the weather and wind from Monday until Friday succeeding?

Ans. The weather was good; the wind was westerly.

14th Int. What was the strength of the wind during this time, from Monday until Friday?

Ans. Nothing more than a whole sail breeze; what they call at sea a pleasant gale.

15th Int. How was the wind and weather from Friday until Saturday morning, January 30th and 31st?

Ans. On Friday night there came on a very heavy gale of wind from the eastward; it rained hard; it was a severe storm.

16th Int. Are you acquainted with the points marked "X," "A," and "C," on the chart? And if so, how well?

Ans. I am acquainted with those points—so well that I have sailed vessels through the Sound. I was born in sight of "A" and "X," and not a great way from "C."

17th Int. Are you a pilot through the Sound, and around that part of Nantucket marked "C"?

Ans. I am.

18th Int. [Objected to for form and generally.] How do the points "X," "A," and "C," compare as places of safety, or peril, for a vessel at anchor in the condition of the Island City, with masts and rudder gone, and an anchor of 700 to 800 pounds, and 100 or 110 fathoms chain?

Ans. "A" is the safest place; it would be a safe harbor in comparison with the others.

19th Int. Describe as nearly as you can the safety or peril of each point for a vessel at anchor at this season of the year—very last of January.

Ans. I should think the peril would be 30 to 40 per cent. more at "X" than at "A," and 75 more at the point "C" than at "A."

20th Int. Look on the chart, and say what in your opinion, as a nautical man, would have happened to the Island City if she had not been taken from the point marked "C" before Friday night. What would have happened to her Friday night?

Ans. I think she would have gone adrift—and either gone ashore or to sea.

21st Int. [Objected to.] Why did she remain there from Monday until Friday?

Ans. It was on account of the weather. They hadn't any severe weather to drive her away.

22d Int. Are you a private underwriter on vessels?

Ans. I have taken risks.

23d Int. [Objected to.] What would have been, in your opinion, a fair rate of premium for insurance on the Island City at point "C," from Friday until Saturday morning?

Ans. I shouldn't want to take her at any price; I would rather do as the captain and crew did, and leave her there; I wouldn't trust my old shoes in her if I could get them out.

24th Int. [Objected to.] Please state what, in your opinion, would have been a fair rate of insurance for any one who would have taken the risk?

Ans. Ninety-five to a hundred per cent.

25th Int. When did you next see the Island City, and where?

Ans. Coming into Hyannis, in tow of the Westernport.

26th Int. Did you go on board her at this time?

Ans. I did not; I was on the wharf when she came into the harbor—within a hundred rods of her.

27th Int. Did Captain Berry and Mr. Peirce, one of the owners of the Island City, call upon you at or about this time? and if so, for what purpose?

Ans. They called upon me on Sunday; Captain Berry wanted to get some advice from me about letting the vessel go. Mr. Peirce remarked that he was in hopes of giving about ten thousand dollars,

and getting the vessel clear, and settling up with Captain Berry; he said he was one of the owners of the bark, and that the underwriters left it with him.

28th Int. Did he say to whom he proposed to pay the ten thousand dollars for premium of his vessel?

Ans. Captain Berry he meant to settle with.

Cross-interrogatories propounded on behalf of Joseph H. Adams, President, &c., and on behalf of Claimants, and Answers thereto.

1st Cross-interrogatory. You say you are a pilot through the Sound and around that part of Nantucket marked C; what license do you hold?

Ans. I don't hold any license; I consider myself a pilot without any license; I always conducted my own vessel.

2d Cross-int. Did you keep any record of the state of the wind, weather, and sea, during the months of January and February, 1857, or do you now testify only from your recollection?

Ans. I only testify from my recollection of those particular circumstances.

3d Int. Were you at Hyannis all this time?

Ans. I was.

4th Cross-int. Why do you think the bark in danger when lying at point X in the Sound?

Ans. On account of the ice, and the exposure to the wind; there is not so much to shelter her there. The winds prevail from the north at that season of the year, and drive the ice over to the south.

5th Cross-int. Taking the wind, weather, and ice, as they were from Friday, the 23d of January, to Friday, the 30th, and suppose a vessel, without spars or rudder, lying at point A or X, would the wind, or the ice, cause most damage to such vessel?

Ans. There were different kinds of weather during that time; sometimes there were squalls of wind from the north; sometimes, during that week, she would be in most danger from wind; and, at other times, from ice.

6th Cross-int. How was the ice in the Sound during that time?

Ans. Pretty thick; stiff.

7th Cross-int. Was it solid or drifting?

Ans. Drifting; it moved with every tide.

8th Cross-int. Was it heavy enough to endanger vessels exposed to it?

Ans. It was; it would carry vessels just where it went, if it came in contact with them.

9th Cross-int. Supposing a vessel, without spars or rudder, had gone adrift in the Sound in that ice, do you think she would have been in danger; and if so, in what danger?

Ans. She would have been in danger of going ashore, or being cut through, or being driven on to Muskeget, or out to sea.

10th Cross-int. Did you have the run of the vessels in the Sound that week?

Ans. Yes; I took notice of the vessels; there was not much passing through the Sound that week.

11th Cross-int. The Sound was completely blocked up, was it not, until Thursday or Friday of that week, so that no vessels could pass?

Ans. It was—they couldn't pass freely; a steamer might, perhaps, have worked through the ice; but it was dangerous for any vessel.

12th Cross-int. Do you know of any light-boats being carried adrift on any of those days? and if so, what one?

Ans. I do; the light-boat on the Bishop and Clerks was carried away during that week, I know; I don't recollect the particular day.

13th Cross-int. Do you know what mooring these boats have?

Ans. A chain and anchor; some have one kind of anchor, and some another; I don't know what this boat had.

14th Cross-int. Are their moorings heavier or lighter than other vessels commonly have?

Ans. They are generally heavier; but sometimes the don't hold so well, because they get foul by the boat twisting round so much.

15th Cross-int. Are not the tide and current stronger outside the Bishop and Clerks light-boat, than at her station?

Ans. There is a channel inside of her, and one outside; I don't think there's much difference in tide between the place where she lies and outside of her.

16th Cross-int. Suppose a bark, like the Island City, had been lying outside the Bishop and Clerks Light at the time the light-boat was carried adrift, with an eight hundred pound anchor and one hundred and ten fathoms chain out, would she not probably have been carried adrift too?

Ans. She would—and have gone ashore, as the light-boat did, and received no damage.

17th Cross-int. Then you don't think there would have been any danger to a vessel drifting about on the sound in such ice as there was then?

Ans. Not so much in the North Channel; there would certainly be danger. As I stated, the wind prevails there from the north, and clears the North Channel, driving the ice over to the south.

18th Cross-int. Not so much but what you could have insured her under those circumstances for a small premium, was there?

Ans. I would insure her for a good deal less there, than I would in the south channel.

19th Cross-int. For what premium would you then have insured her?

Ans. I think about twenty-five or thirty per cent. If she came ashore, we could get the cargo out.

20th Cross-int. What would you charge for a staunch bark of five

hundred tons, fully equipped for a voyage, from Hyannis to Boston in ordinary winter weather when the Sound was free from ice?

Ans. About one per cent.; one to two in good weather.

21st Cross-int. Where were you on Friday night, January 30th, and what doing?

Ans. At home. I couldn't sleep much on account of the storm.

22d Cross-int. Do you know of your own knowledge how the ice and sea were, at the point marked C, from Monday the 26th, to Saturday the 31st of January, 1857?

Ans. I was not there, and have no knowledge. I could only judge from what there was inside.

23d Cross-int. Have you been in Hyannis most of the time since January, 1857?

Ans. I have.

24th Cross-int. Has not this matter of the Island City and the service rendered her been a good deal talked over by the people there, since January, 1857?

Ans. Not a great deal lately; it has got to be an old story.

25th Cross-int. Was it not a good deal talked about at the time, and between that time and the next winter?

Ans. Yes, considerable. They thought that they did wrong in not paying them for the assistance they had rendered them.

Cross-interrogatories on behalf of John Norris et als., and answers thereto.

26th Cross-int. What caused the light boat near Bishop and Clerks to go adrift when she did?

Ans. She fouled her anchor, as I understood.

27th Cross-int. Situated as the Island City was off the Horse Shoe, without anchors, spars, or rudder; what would have been her situation as to damage during the time the Kensington was engaged with her, if no assistance had been rendered; was she or not in great peril?

Ans. I think she was in great peril. I think she would have gone to sea or gone ashore, if the Kensington hadn't taken her when she did.

28th Cross-int. What was the weather during the time the Kensington was engaged, and what was her danger, if you know?

Ans. It was fine weather when she went out of Hyannis. It came on a severe squall while she had hold of her. This is only what I learned from Capt. Norris. I wasn't on board. I know what the weather was at the time, myself. There was danger of the Kensington running ashore or getting on the shoals in the thick weather. It was a thick snow storm.

29th Cross-int. Was there or not much drifting ice there at that time?

Ans. There was.

30th Cross-int. Is it or not a very dangerous place about the

Horse Shoe at that season of the year, and at such a time in such weather?

Ans. It is so considered by every one.

31st Cross-int. What was the situation of the bark Island City at the place where the Kensington left her, as compared with her situation where and when they found her?

Ans. As I understood, she had no anchor down where they found her, and they left her with an anchor and 100 fathom of chain. I would have insured for about twenty-five per cent. where they left her. I should have wanted a good deal more for her, where they found her. I stated before that I thought it was worth thirty per cent. more.

32d Cross-int. Was not the bark more accessible, and more in the way of passing vessels at A than at X?

Ans. Much more. The south channel was entirely blocked up. There was no passing.

33d Cross-int. With the wind to the northward, where would the most floating ice be, at A or at X?

Ans. At X.

34th Cross-int. With the wind to the northward, would there be much ice at A?

Ans. The wind off shore clears the north channel; it drives all the ice over to the southward.

35th Cross-int. With the wind to the northward, at which point is the least sea, and the best holding bottom?

Ans. A is the best place; A is the safest place. The least sea is at A; a vessel would hold on longer there, because it is smoother water.

36th Cross-int. How long did the bark hold on at A before the steamer took her, and what was the weather during that time?

Ans. The weather was hard frost, so that vessels couldn't get out of Hyannis. She was there two or three days.

37th Cross-int. Was there not a severe gale during that time?

Ans. It blew strong one day, what we call a gale; a strong gale one day.

38th Cross-int. With her ground tackle and in her position at A, would she have been likely to have gone adrift at all?

Ans. She would, I think, if the field of ice had come in contact with her; but she wouldn't have received the same injury, if she went ashore, that she would if she had been in the south channel.

39th Cross-int. With the wind to the north, was there much or any danger from drifting ice at the place where she was, at A?

Ans. Not so much, as I stated before, as there would have been off in the sound, on account of the north wind keeping the channel clear.

40th Cross-int. If no ice had touched her, would she have drifted from point A?

Ans. In my opinion, she would not.

41st Cross-int. Did you see the bark when the steamer Forbes first took her into Hyannis?

Ans. I saw her coming in. She didn't get inside the breakwater at all; she was in what we call the outer harbor.

42d Cross-int. Was she or not taken inside of other vessels then at anchor there?

Ans. She was in as far as some vessels.

43d Cross-int. Was she not safe there?

Ans. I should so consider her. None of the vessels that were lying there met with any harm, I believe.

44th Cross-int. How long did she lay there?

Ans. I can't say, because I didn't see her go out. I saw her after she was out. I think she laid there most of the night.

45th Cross-int. Why was she taken away from there, and by whom was she so taken away?

Ans. She was taken away by the steamer Forbes. I don't know why. There was a great many thought very strange of her being taken away without a rudder.

46th Cross-int. If she had remained there, could she not have worked her way into the inner harbor?

Ans. She could, most undoubtedly, with the steamboat to work her in.

47th Cross-int. Do you know of any efforts made by the Kensington or her crew in behalf of the bark, after she was left at point "A"?

Ans. I saw Capt. Norris on shore. He said he was going to telegraph the owners. He did telegraph them where he had left her, and he said he was going to her assistance again as soon as the weather would permit.

48th Cross-int. Did he or his crew take any steps toward so doing?

Ans. They tried to get out from Hyannis, but were prevented by the ice.

Further Cross-interrogatories propounded on behalf of Joseph H. Adams, President, &c., and of Claimants; and Answers thereto.

49th Cross-int. What sort of ice was this which you say prevented Capt. Norris from going back to the bark? Was it solid or floating? how thick was it? and how long did it remain in the harbor?

Ans. It was solid ice. It froze around the breakwater, and off to the Kensington. It was thick enough to bear a man—about two inches thick. It remained there several days. It was held there by the breakwater.

50th Cross-int. Was it colder or warmer on Friday, the day after the Kensington returned, than it was on *that* day, Thursday?

Ans. It was colder.

51st Cross-int. Was not the ice on that day, Friday, and for two or three days following, very heavy in the harbor and in the sound?

Ans. It was, so that a man could walk about in the harbor; but the north channel was clear part of the time, for a vessel came in. This ice was held by the breakwater.

52d Cross-int. You are quite sure a vessel came in on one of those days, are you not?

Ans. I am.

53d Int. What vessel was it?

Ans. I don't recollect her name. She came in and had an anchor carried off to her on the ice. I have her name at home, because I noted a protest for her.

54th Cross-int. Are you acquainted with the tides and currents in the Sound? If so, how strongly does the tide run through the channels you have spoken of?

Ans. I am. The tide runs three knots in the full tides; at neap tides not so strong.

55th Cross-int. Does not heavy, drifting, field ice move more with the tides and currents than with the wind?

Ans. I think it does.

SYLVESTER BAXTER.

Deposition of John W. Bergen, examined on behalf of H. B. Cromwell and als., June 18, 1858.

1st. Interrogatory. Please to state your age, residence, and how long you have been at sea, and how long engineer of steamers.

Ans. I am thirty-five; live at Brooklyn, N. Y.; I have been to sea about fifteen years, and as engineer of steamers for the last twelve years.

2d Int. Were you chief engineer of the Westernport, in January, 1857?

Ans. I was.

3d. Int. Please to state your course through the Sound on Friday, January 30th—which channel were you going through?

Ans. We were bound up the North Channel.

4th Int. Did anything occur to lead you off your course up North Channel, and what was it? [Objected to.]

Ans. I can't answer that, because I am always below when the ship is at sea, and I don't see what goes on.

5th Int. Do you know about a signal from the light-ship?

Ans. Nothing except by hearsay.

6th Int. Did you see the Island City yourself before you took her? When first?

Ans. Yes. I was the first to see her. It was between ten and eleven in the forenoon.

7th Int. Describe how she looked.

Ans. When I first saw her, she looked like a log on the water at a great distance. Then I looked with a glass from the ship's rail, and saw plainly that it was a dismantled vessel.

8th Int. When you discovered her, were you still on your course

of the north channel, or had you turned off from it; and why had you, and how far had you gone for that purpose?

Ans. I can't answer any part of that.

9th Int. Did you go to the light boat?

Ans. Not that I know of.

10th Int. Do you know anything yourself about going to the light boat, or a signal from her; and if not, why not?

Ans. I know nothing about it, except by hearsay, because my position is below.

11th Int. Were you accidentally on deck, when you discovered the Island City?

Ans. I was.

12th Int. Do you know, of your own knowledge, whether, when you discovered her, you were off the regular course or not?

Ans. I do not.

13th Int. Do you know the value of the steamer Westernport at that time, exclusive of cargo and freight?

Ans. She was judged to be worth between fifty and sixty thousand dollars.

14th Int. Are you sufficiently acquainted with steamers to know the general market value of steamers such as the Westernport?

Ans. I am.

15th Int. You have told us what she was rated at generally—what is your own opinion of her value at that time?

Ans. I should suppose that the vessel was worth about fifty thousand dollars. I wouldn't hesitate to give that for her, if I was a purchaser.

16th Int. Do you know the character of her cargo then, and its value? (Objected to.)

Ans. It was principally merchandise. I have no idea of the value.

17th Int. Did the Westernport incur any danger or exposure in taking the Island City from where you found her to Hyannis—and if so, what?

Ans. She did incur danger; she came very near going ashore on Nantucket Point; there was danger of being stove, in going alongside the ship with the steamer, and on Friday night she did stave her.

18th Int. Did you go on board the Island City—and if so, when, and for what purpose?

Ans. I went aboard of her first, about one o'clock on Saturday morning; merely to look round and see what she was.

19th Int. Did you go on board her afterwards; if so, when, and for what purpose?

Ans. I went on board afterwards—on Saturday, about ten o'clock in the morning, to take charge of her; she laid then in Hyannis harbor.

20th Int. How long did you remain on board her, and in what capacity?

Ans. I remained from that time until the following Thursday—as near as I remember—in charge of her, with two men besides myself.

21st Int. Whilst you were on board, were any articles of clothing, or other articles, taken from the bark by any person belonging to the Westernport?

Ans. [Objected to.] Not to my knowledge.

22d Int. Were any complaints made to you, or in your presence, by the men or officers of the Island City, that they had lost clothing or other articles? And if so, state all that you know in relation to the same.

Ans. There were; I know there was some clothing taken out of the bark; I asked the men why they did so; they said they used them for the purpose of keeping themselves comfortable and warm; in boarding the bark, in the first place, the men went very thinly clad—for there was danger of the boat being swamped; they all boarded her in their shirt sleeves, and some even bare-footed; the crew of the Island City complained to me about their clothes being gone; I asked the crew of the Westernport for the clothes and everything that had been taken by them from on board the ship; they gave them up to me, and I took them on board the Island City.

Adjourned to June 19th, at 11 A. M.

June 19th, 1858.

23d Int. What was then done with them?

Ans. They were distributed among the crew, all taking their own.

24th Int. Were any chests or trunks broken open while you were on board the Island City, or at any time, to your knowledge?

Ans. There were none broken open while I was on board—nor were there any locked when I went on board; they were all open; none were broken open at any time, to my knowledge.

25th Int. Were there any nuts on board the Island City? And if so, what kind, and what was done with them, if anything?

Ans. There were some pecan nuts. They were eaten by everybody—the crew, and the visitors to the vessel. They were exposed in the cabin, and every one helped himself.

26th Int. Did you see a black carpet-bag on board the Island City? And if so, what became of it?

Ans. I saw one. I found it in the forecastle, and put it in the cabin. It was there when I left the vessel.

27th Int. What quantity of the nuts were eaten, and why did you permit them to be eaten?

Ans. I suppose there was half a bushel of them eaten, all together. They were about all gone when I left the vessel. I didn't know that I had any business to prevent their being eaten.

28th Int. Can you state by whom they were eaten?

Ans. I can state some of them. Myself, Capt. Berry, and the crews of the Westernport and of the Island City generally.

29th Int. Did you hear Captain Stevens say anything about the Island City? If so, what?

Ans. Capt. Stevens asked me if I would allow him the privilege of coming aboard the vessel to get his private property. I told him certainly. In the cabin, in conversation with some persons, I don't exactly remember who, he said that they—meaning the Western-port's crew—had deserved all they would get; that they had worked hard, and been the means of saving the bark; that she could not possibly have rode out night before last (meaning Friday night) where she was.

Cross-interrogatories propounded on behalf of Jos. H. Adams, President, &c., and on behalf of Claimants, and Answers thereto.

1st Cross-int. Whence from, and where bound, was the Western-port, when she fell in with the Island City?

Ans. From New York, bound to Boston.

2d Cross-int. Was she not from Tarpaulin Cove, bound to Boston?

Ans. She was from Tarpaulin Cove last.

3d Cross-int. How long had you been at Tarpaulin Cove, and why did you remain there during that time?

Ans. I think we had been there nearly two weeks off and on, ice-bound.

4th Cross-int. How did you occupy yourselves during that time?

Ans. In making attempts to get through the ice.

5th Cross-int. How often did you attempt it, and how far did you go?

Ans. I think we made three or four attempts, and got some sixty miles outside, back of Nantucket.

6th Cross-int. Could you not then have made open water, and proceeded to Boston?

Ans. No. We went as far as we could get; but, in consequence of the thickness of the ice, there was no water to be seen from the mast head, and night coming on, we thought it advisable to put back to Tarpaulin Cove.

7th Cross-int. When did you make this attempt? When did you return to Tarpaulin Cove? Were your other attempts before or after this one?

Ans. I can't give the date; I think it was the third day after we arrived there. We arrived back at Tarpaulin Cove between two and three o'clock next morning. The other attempts were after this one. We were constantly moving the vessel about.

8th Cross-int. Was Friday, Jan. 30th, the earliest day your boat could get out from Tarpaulin Cove?

Ans. I don't remember the date; the day we left there for the last time, was the earliest day we could get out; as soon as the captain received advices from up on the Cape that the ice was breaking, he started out and came through.

9th Cross-int. Whence, and from whom, did those advices come?

Ans. They came from the telegraph stations further along the Sound; I don't remember the names of the places, nor who sent them.

10th Cross-int. How often were these advices received?

Ans. Every day—sometimes two or three a day; the station this way was constantly reporting to the station at Tarpaulin Cove the state of the ice.

11th Cross-int. Did they report to you that the light-boats had been carried adrift by the ice?

Ans. I don't remember any such reports.

12th Cross-int. Did you, or any of the officers or crew of the Westernport, go ashore at Tarpaulin Cove? If so, how often, and how long did you stay?

Ans. Some of us went ashore every day—sometimes for an hour—sometimes two. I was on shore every day when I considered it safe to go. Somebody had to go ashore every other day, or oftener, for fresh water.

13th Cross-int. At what time of day did you finally leave Tarpaulin Cove?

Ans. Between six and seven o'clock A. M., I think.

14th Cross-int. You say that you first saw the Island City. Was this before or after you spoke the light-boat?

Ans. It must have been after; we didn't speak any light-boat afterwards, and I don't remember speaking any before.

15th Cross-int. You say the Westernport was in danger of going ashore on Nantucket Point. How was this?

Ans. In consequence of having this bark in tow. The sea was so heavy, that we couldn't go fast enough to obviate her lee way.

16th Cross-int. What is the power of the Westernport?

Ans. About 185 to 195 horse power.

17th Cross-int. Was it before or after you went on board the bark that she stove the Westernport, as you have stated?

Ans. It was after I went aboard the first time.

18th Cross-int. How long after?

Ans. About four hours.

19th Cross-int. When was the danger of the bark's staving the boat greater—during the towing, or while making fast?

Ans. The greatest danger was while making fast.

20th Cross-int. What caused her to stave the boat, as you have stated?

Ans. A heavy sea making them come together.

21st Cross-int. Was the sea worse then than while you were making fast to the bark?

Ans. No, it wasn't worse, but it was a different kind of sea. When we made fast to her there was a long swell; when she stove us, there was a short chop sea, and a stiff breeze of wind blowing.

22d Cross-int. How did you get from the steamboat to the bark when you first went on board?

Ans. I jumped aboard.

23d Cross-int. On what day did this conversation of Capt. Stevens, to which you have testified, take place?

Ans. On Sunday.

24th Cross-int. Who were present at the time? Name every one.

Ans. I don't know the name of a single person present, except myself and Capt. Stevens.

25th Cross-int. How many were there, and where was the conversation held?

Ans. There were perhaps half a dozen present. The conversation was in the cabin of the Island City.

26th Cross-int. Have you told all that was said by Captain Stevens?

Ans. All that I remember, and all that I paid any attention to. I had something else to attend to than listening there.

27th Cross-int. And was all this told in the cabin?

Ans. It was.

28th Cross-int. Had not you, or some one on board, refused to let Capt. Stevens and the crew of the Island City come on board her, before he asked permission to come and get his personal property, as you have stated?

Ans. No, sir.

29th Cross-int. His first remark, then, was a request for permission to come on board and get his personal effects, was it?

Ans. It was.

30th Cross-int. And this was in the cabin?

Ans. No, it was on deck. I was standing on the rail of the Island City, and he on the rail of the R. B. Forbes.

31st Cross-int. Then you had conversation with Capt. Stevens before that which you have stated took place in the cabin?

Ans. Only as I have stated. I had no conversation with him in the cabin, about the vessel or any of the occurrences.

32d Cross-int. Do you mean to swear that you have stated all Capt. Stevens said in your presence in relation to the vessel?

Ans. All he said that day, to the best of my recollection. He may have said other things, and I not have noticed them.

33d Cross-int. In stating this conversation, then, you only give your present recollection of it, and not what Capt. Stevens actually said, do you?

Ans. Those few words which I have stated I remember very distinctly. I was present at the time. There were some gentlemen there asking him questions. I returned on deck after hearing what I have stated.

34th Cross-int. Then you mean that you remember his precise words in those remarks, do you?

Ans. As near as may be. I can't be sure of every syllable.

35th Cross-int. Which, then, do you now profess to give, his precise remarks, or your present recollection of them?

Ans. I propose to give, as near as may be, the precise remarks that I heard.

36th Cross-int. How nearly may this be?

Ans. As near as I can remember.

JOHN W. BERGEN.

Depositions taken in cause, John Norris & als., Libellants, and Wm. C. Norton & als., Petitioners, owners of the schooner Kensington, vs. *The bark "Island City" and cargo, and used in the present cause.*

Deposition of Thomas Gray, taken on behalf of Libellants and Petitioners, before C. P. Curtis, Jr., Feb. 26, 1857.

1st Int. What is your name, age, and occupation?

Ans. My name is Thomas Gray, my age is thirty-seven, and I am master mariner. I am master of the schooner Kensington.

2d Int. How long have you followed the sea, and in what capacity?

Ans. About twenty-two years; about six years as master.

3d Int. State whether you were in command of your schooner on the 21st of January last; and where you then were.

Ans. I was in command of that vessel, and was at that time in the harbor of Hyannis with her.

4th Int. Who are the general owners of the schooner Kensington, January 21st, last; on what if any terms were you then running her?

Ans. Warren H. Pearce, George H. Crowell, William C. Norton, Thomas Gray, and Everdeen & Hooton. I was running her on shares, one-half profit and five per cent. on the whole stock. I took her the first of last June, with no written contract and for no specified time, but for so long as I might choose to run her. I made these terms with the owners. I was to go with her where I pleased, and in what business I pleased, and was to pay the owners for the use of her, their proportional part of the stock money. I was to victual and man her, and after I had taken out one-half the earnings for myself and five per cent. on the balance, I paid the residue of the earnings to the owners for the use of the vessel.

5th Int. What was the tonnage of the schooner Kensington?

Ans. One hundred and eighty-one tons.

6th Int. State in detail all the circumstances connected with your services to the bark Island City, referred to in this cause.

Ans. On the 21st of January last, our company saw the bark from a steeple in Hyannis; she was lying over in the South Channel near the Horse Shoe. It had been snowing, but was then clear; the wind from the southward and westward. This was about noon. The weather before this has been a gale, which begun Sunday afternoon

and ended Monday noon. We—the libellants—nine of us, went off to our vessel, then lying in Hyannis harbor near the breakwater, and got under way. There was heavy ice in the harbor, and it was cold weather. We went out through the ice and stood out for the bark, about 15 miles. She was about a quarter of a mile from the Horse Shoe, south by west from Hyannis light. The Horse Shoe bore about south from her. We got to her at 8 o'clock in the evening; we had to go through a good deal of ice to get to her; I, with three others, went on board of her; the captain of her, Capt. Stevens, requested us to come on board. She had no spars standing and no rudder. The captain supposed he had an anchor down, but we found she had not. There was a stream anchor on deck, but no cable bent to it; I should judge it was of about eight hundred pounds weight. That anchor was sufficient to hold her in a harbor with plenty of chain, but not in a storm. She had one chain out; we hove on the chain and got it aboard, and found no anchor on the end of it. Her spars and masts had all been cut away; and her rudder was carried away by the spars when they drifted under and past her stern. She had lost her other chain and anchor. The weather at this time was very moderate, wind from southeast. There was a great deal of ice floating and drifting about there, from six to eight inches thick. It was about slack water. Her crew I should judge was about fifteen. I never counted them. The captain requested us to tow him, and we took a hawser and hove his chain in, and towed her about three miles towards Hyannis and then came to anchor, on account of there being no wind. We came to anchor about eleven o'clock that night. We lay there till about one o'clock, when the wind sprung up from east-northeast, and hauled in to the northward, with snow, and a four or five knot breeze. We then got under way again, and with the bark in tow stood in for Hyannis. We got along about eight miles, and came to anchor again, about four o'clock Thursday morning. The weather and ice was so thick, we had to come to anchor. It was a thick snow storm and a great deal of ice. The wind had then increased to an eight or nine knot breeze. We laid there till 7 o'clock that morning, and he then hove up his stream anchor and drifted astern of us. We then hove up ours, and in ranging ahead of him, we parted. He then had to come to anchor again with his stream anchor, which had been bent on to a chain. We then stood up to him and asked them if they wanted to be taken off; it was too rough and too much ice to make fast again. The captain said no. Then we told him we would go in and come out again, when the weather moderated. We then went in, and couldn't get out again on account of the coldness of the weather and ice. Before going in I told the master that if we couldn't get off again, we would telegraph to the owners in Boston, and he said he wished we would. We left her about eight o'clock of Thursday morning, January 22, and got ashore about twelve o'clock. Capt. Norris telegraphed at once to the owners at Boston. Capt.

Norris is one of the libellants; we all went aboard of our vessel again, with five more men at three o'clock P. M., for the purpose of going out to the Island City again, but the weather was so thick, and it blew so heavy, we could not get under way. We stayed aboard all night with the intention of getting off as soon as the weather should moderate, and the next morning we were frozen in. We stayed aboard all that day it was so cold, and the following day we went ashore again. About noon on Saturday the steamer Forbes came; she came in consequence of the telegraph message, we telegraphed for her to come.

7th Int. State the exact situation of the bark Island City when you left her as to position and safety.

Ans. We left her about a mile to the southward of the light-boat, about a mile or a mile and a half south-half-west from Point Gammon. The wind then was about north, with a double reef breeze. We had one stream anchor ahead, with from ninety to a hundred fathoms of chain out. This was about twenty-five fathoms more than usual for a vessel of her size. Her cable was made up of two chains bent together. The water was about four fathoms and a half in depth where she lay. In this depth of water and all this chain, and in that position, I considered her safe. It proved it was safe there, because she rode out a heavy gale with that anchor and chain, and never moved at all till the "Forbes" came and took her.

8th Int. What was the tonnage and cargo of the bark Island City?

Ans. She was between five hundred and six hundred tons, and her cargo was cotton.

9th Int. State the danger to which the bark Island City was exposed, if any, at the time you reached her.

Ans. She was in danger of going ashore before morning, on the Horse Shoe, as the wind then was. The Horse Shoe is hard gravel bottom shoal, with about five or six feet of water average tide. This bark drew eleven feet. When we found her, there was no wind, and she was held by the chain.

10th Int. Do you know whether she was held by the chain, or was she drifting when you reached her?

Ans. She held by the chain, for there was no wind.

11th Int. When the wind first breezed after you reached her, where would it have carried the Island City?

Ans. It would have carried her on to the Horse Shoe.

12th Int. [The first part of the interrogatory objected to.] (What would have become of the Island City when the breeze sprung up, if you had not taken her in tow), and what, if anything, could have been done to save her by those on board?

Ans. She would have gone ashore on the Horse Shoe. The wind and tide were both setting her on to it. I don't think anything could have been done by those on board to prevent it, because they wouldn't have had time, after the wind had sprung up and they had

found out that there was no anchor on their chain, to have hove in their chain and bent on the stream anchor, before she would have gone on to the Horse Shoe.

13th Int. If the Island City had gone ashore on the Horse Shoe, what would have become of her?

Ans. I should judge she would have been lost.

14th Int. State the reasons why.

Ans. Well, she was so far to the southward of any land, there was no lee: and a heavy sea made which would have broken her up. The wind kept increasing that night, and was succeeded by a heavy gale from the northeast, northward and northwest, where the heaviest of the gale blew from. If she had gone on there from the northward or northwest, she would never have come off. She wouldn't have gone on there, however, with the wind from northwest. The northeast wind would have carried her on.

15th Int. Had the Island City any boats when you reached her, and what number? what was their capacity? and were they sufficient to have rescued those on board?

Ans. She had one common sized jolly boat. She had lost one. This boat was in good order enough so far as I know, but they could have done nothing with it in that ice. It would have been stove in pieces.

16th Int. State whether this point, the Horse Shoe, is difficult or easy of access, for saving cargo and lives of those on board the Island City, had she gone ashore there.

Ans. Very difficult I should think. I should suppose they would have all gone to pieces, and lives lost, if they had gone on to it. It is so far from shore, and it is entirely surrounded by other shoals and rocks, and is inaccessible. No one would have seen her either.

17th Int. What was the cargo of the schooner Kensington? were you fully loaded? at this time, where were you from and where bound? and how came you in Hyannis harbor?

Ans. She had a full cargo of coal, bound from Philadelphia to Boston; and we had gone into Hyannis, on account of the wind and stress of weather.

18th Int. Was the schooner Kensington, vessel and cargo and freight insured for the voyage at this time?

Ans. They were.

19th Int. State, if you know, the value of the schooner Kensington, vessel, cargo and freight, and outfits at this time.

Ans. Vessel was valued at six thousand, cargo was worth about fifteen hundred dollars, and freight six hundred. The outfits were worth about four hundred dollars.

20th Int. To what peril did you expose your vessel, cargo, freight, outfits, and your lives in rendering this assistance at any time?

Ans. I should consider it a good deal. We ran the risk of losing our vessel and our lives. There was a thick snow storm and drifting ice. There was danger of her coming into us, when we were made

fast to her, and sinking us. She had no rudder to steer by, and she would give every once a while a sheer, and come up alongside of us; there was great danger of her coming into us. She did run into us once in that way. The place where we found her was also a dangerous one to go to; out of the ordinary course of navigation, and where, but for this purpose, we should not have gone.

21st Int. How, if you know, was the bark Island City stocked with provisions at this time, and what was the condition of the crew for the discharge of their duty?

Ans. The captain said he had plenty of beef and bread, but was getting short of some small stores. Her crew was all well, except one. I don't know this myself.

22d Int. State the names of all on board the schooner Kensington at the time you went to assist the bark Island City, and their capacities, and who of them were your crew and how the others came on board.

Ans. Myself, John Norris, Joseph H. Coffin, George D. Hart, and one more I don't know. These were the extra hands who did not belong to the crew. The names of our crew were Timothy Taylor, Ezra Setzer, Duncan Campbell, and Charles Brown.

23d Int. Were all the libellants on board the Kensington, whose names are given in the libel of John Norris, and others, against the bark Island City and cargo, and were there any others on board of her?

Ans. They were all on board, and no one else was aboard.

24th Int. [Objected to.] State what the captain of the Island City said to you, if anything, about his danger, when you came to him, and your service to him.

Ans. He has since said to me that he supposed the bark would have been lost with all on board, if the schooner had not gone to him, as she did.

25th Int. [Objected to.] State whether or not from your experience in your business, upon the facts stated by you, the bark Island City and her cargo and crew would have been lost, but for the assistance rendered by the libellants in this case.

Ans. I think they would; yes, sir.

26th Int. State whether you propose to leave the country, and when, and for what place or voyage.

Ans. To-morrow, I propose to go to New York and thence to sea. I am going in the schooner Kensington.

27th Int. How came the men not of your crew, on board?

Ans. Because I wanted more help. I asked them to go.

And in answer to the following Cross-Interrogatories proposed by John D. Bryant, Esq., on behalf of the Respondents.

1st Cross-Interrogatory. How long had the Island City been lying where you found her, when you went to her aid?

Ans. They first discovered her on Tuesday afternoon.

2d Cross-int. Was the Island City, when you boarded her, drifting or stationary?

Ans. She was stationary, as far as I know.

3d Cross-int. Have you not stated that the weather, when you boarded her, was very moderate; that you were obliged to come to anchor during the night for want of wind? and if so, would said bark have been in danger of drifting on the shoal?

Ans. I have so stated. Towards morning the wind breezed up, and there was danger then of her drifting on shore.

4th Cross-int. What anchors and chain, and of what weight had the Kensington out, when you came to anchor during the night after you commenced towing?

Ans. The big sheet chain and anchor. The anchor weighed about ten hundred, with thirty or thirty-five fathom of chain.

5th Cross-int. When you lay at anchor, was the Island City made fast to you? did you drift?

Ans. She was. We did not drift.

6th Cross-int. Could not the Island City then have lain in safety where you discovered her, with only her stream anchor and what chain she had on board?

Ans. She could as long as it remained moderate; but not when it breezed up, if she had had her stream anchor out.

7th Cross-int. State particularly what number, length and weight of chains, and what ground tackle said bark Island City had on board.

Ans. She had two chains, both broken; over a hundred fathoms, I should suppose together. She had no chain for her stream anchor. She had a stream anchor, and also a kedge anchor weighing about two hundred pounds.

8th Cross-int. Was either of these anchors attached to any cable, and if so, which of them?

Ans. Neither of them was attached to any cable.

9th Cross-int. How long would it have required to bend one to an anchor?

Ans. In such weather as that, two hours, and that would depend on what they had to it with.

10th Cross-int. How long did it in fact take to bend the chain on to the stream anchor?

Ans. It took four hours. They commenced as soon as we got up to her, and they never got it finished till twelve o'clock at night.

11th Cross-int. How do you know that the bark Island City had lost two of her anchors?

Ans. The captain told me he lost one, and in heaving in her chain we found there was no anchor on that.

Direct-examination resumed.

1st Int. How far had the Island City drifted from her anchor

when you reached her, and what would have become of her without a wind, as she then was?

Ans. She would probably have drifted with the ice, and she couldn't have drifted very far without going ashore.

THOMAS GRAY.

Deposition of Timothy Taylor, taken on behalf of Libellants and Petitioners, before C. P. Curtis, Jr., Feb. 26, 1857.

1st Int. What is your name, age, and occupation; how long have you followed the sea?

Ans. My name is Timothy Taylor; I reside in Yarmouth; my age is twenty-five. I am mate of the schooner Kensington, and I have followed the sea thirteen years.

2d Int. Was you on board the Kensington at the time of her assistance to the bark Island City? If so, in what capacity? State all that took place from the commencement.

Ans. I was on board the schooner as mate. Tuesday night, the 20th of January, I heard of this wreck, and Capt. Gray said he'd go to her that night if he could get anybody to go with him. Night came on so fast, and Capt. Gray hadn't seen her himself, that we put it off till the morning. Next morning the harbor was froze all up so that we couldn't get off, and I and some others broke the ice from the schooner to the wharf. Capt. Gray came down to the wharf with three men, Jos. Coffin, William Anthony, and John Norris. George Hart was aboard the schooner over night. There was a signal of distress on the bark; I saw it. We went aboard the schooner and got under way about noon on Wednesday; the weather was freezing. We got out through the ice by breaking ahead of us about two miles and a half. We then stood for the Island City; she was from twelve to fifteen miles from us, lying in the bight of the Horse Shoe. If I had been aboard of her I should have considered it about equal to being on a raft. Her spars, sails, and masts, and rudder were all gone, and she had lost one of her boats. She had one boat left, which in moderate weather and open sea, might have carried six men ashore; but through the ice she couldn't have lived. I didn't see the end of the chain when they were heaving on it, but I heard them say, as the end came in, that there was no anchor on it. She had a stream anchor and a kedge anchor; a very small kedge, not big enough for our schooner. The other would weigh about seven or eight hundred. The captain of the bark asked us to tow him into Hyannis, and our boat brought his hawser from the bark to the schooner. When we first came up to him, we asked the captain what he wanted. He said he wanted to be towed in, and I asked what we could do with the bark. She had no rudder. We said we could tow him. Then he wanted Capt. Gray to come aboard of the bark. Capt. Gray with three men went. They were Capt. Gray, John Norris, Joseph Coffin, and William Anthony. After they got aboard they hove on the chain, and we got under way and

started for Hyannis. We had as much as we could do to keep the hawsers from catching on the ice; one would catch and then the other would slack up. We run about three miles and then we came to anchor, there was so little wind and so much ice and the tide was running. We lay there about two hours, and then got under way again. While we were at anchor it came on to snow very thick, and shut in all the lights. About 2 o'clock it began to breeze up from the northeast, and we started again to tow the bark. While we lay at anchor, the crew of the bark were bending their anchor to their chain. The wind kept working into the northward, and kept increasing till it blew a gale, and snowed very thick. We ran up off the light-boat off Hyannis with the bark, and there came to anchor with her about three or four o'clock in the morning. The bark then dropped her anchor with part of both cables out. We lay there about three hours, and then the bark hove up her anchor, and we then saw the ice coming down the harbor thicker than ever. We then got under way again, but in starting, one hawser carried off our cleets and part of the rail, and the other hawser parted. Capt. Gray sang out to Capt. Stevens to let go his anchor. We ran round under his stern, and asked the captain if he wanted to be taken off, that we had done all we could for him at that time. The captain said no, he believed he would hold on. It was then blowing a gale of wind with much ice. We then tried to tack ship, but got stuck in the ice and couldn't get round. The ice and wind took us off some way to the eastward, most out of sight of the bark before we could get round. The bark, when we left her, was within about a mile south by west of the Hyannis breakwater; she was where vessels sometimes anchor, and it was not good anchorage. She was not within the breakwater. The wind was then about north or north by west, and after we got round we went back to her again, and offered to take him off again, and told the captain we would run in towards land and see where we were, for he thought as the weather was then, if we saved the schooner and our lives we should do well. Then we left him, telling him we would return as soon as the weather moderated. After beating two hours through the ice, through a thick snow storm and gale, we made Point Gammon and came near running on the rocks. We worked into the harbor of Hyannis through the ice, and Capt. Gray got ashore on Thursday about noon. The captain came off with some more men, with some provisions for the schooner, and some oil for the bark. We did not try to get off again, for we couldn't get under way again. The harbor was frozen and we could walk ashore. We could see the Island City when it moderated. The steamer Forbes took her on Saturday about noon. She never moved from where we left her till the Forbes took her. The solid ice did not extend out to where she was.

3d Int. Was she, with the chain she had aboard and her stream anchor in her situation, safe when you left her?

Ans. Yes, sir. No wind could have started her with that chain and anchor from that place.

4th Int. To what peril was your vessel and cargo exposed in rendering this assistance to the Island City, and the personal labor and exposure of those on board?

Ans. There was great danger every minute of the ice cutting her through, and while we had hold of the bark, as she had no rudder, when the schooner ran into the ice and stopped, there was great danger of the bark's running into us, having no power of steering clear of us. As it was, she did run into us in that way once. The place where we found the bark was in a dangerous place, surrounded with shoals, and it took a smart man to go round there. It was a gale of wind, and thick snow storm, and all hands were on deck all night at work; and we were in constant danger of losing our property and lives. The weather was very cold when we started, and afterwards moderated. We were shovelling snow and ice off our decks all the night, after twelve o'clock, till we got into Hyannis.

4 1-2 Int. [Objected to.] What would have become of the bark Island City had you not gone to her, under the circumstances in which she was placed?

Ans. By eight o'clock, Thursday morning, she would have been ashore. She might have lain there till three o'clock in the morning perhaps, but after that she would have begun to drift. The wind having breezed to the north and blowing a gale, would have carried her upon the Horse Shoe inevitably.

5th Int. [Objected to.] What would have been the result had she gone on to the Horse Shoe that night, and why?

Ans. She would have been a total loss; bark, cargo, and all hands. It was a very hard bottom with shoal water, and with no possibility of assistance. The ice pressing on her, would have gone over her and she would have broken up in a short time. She was so far from land she couldn't have been seen. She might have been seen in clear weather from Nantucket.

6th Int. [Objected to.] Was there time after you found her for those on board the bark Island City to have bent on the stream anchor before she would have gone ashore? if not, why not?

Ans. No, sir. The way the wind was, and sprung up, she would not have had time to have got her chain in, and bent an anchor on. After the breeze sprang up she would have drifted ashore in half an hour. She wouldn't have found out that there was no anchor on her chain; because instead of heaving it in they would have more paid out chain, as soon as they found her to be drifting, and in the meantime she would have gone ashore.

7th Int. Have you heard Capt. Stevens say anything about his danger at the time you reached the bark, or the value of your assistance? and what?

Ans. I heard him say that if it hadn't been for us, the bark and all hands would have been a total loss, and he said that if we had only

gone out then and reported him he should have calculated to pay us about three hundred dollars.

8th Int. Do you propose to leave the district, and when?

Ans. I am going in the schooner when she goes; I expect to leave to-morrow. TIMOTHY TAYLOR.

Deposition of Joseph H. Coffin, taken in behalf of the Libellants before E. Merwin, Commissioner, September 22, 1857.

1st Interrogatory. State your name, age, residence, and occupation.

Ans. My name is Joseph H. Coffin; age 38 years; residence Hyannis, Massachusetts; and I am a sailmaker.

2d Int. State what you know about the matter of salvage referred to in the suit of John Norris & al. *vs.* the bark Island City.

Ans. There was one or more attempts made the evening previous to the morning of the twenty-first of January, 1857, to go to that vessel and were given up; attempts were made by others. On the morning of the twenty-first, Captain Gray himself made the attempt and gave it up, until Captain Norris came forward and made the attempt with Capt. Gray to go aboard of the schooner Kensington in the ice, and got said schooner under way and proceeded through the ice to relieve the distress on board of the bark Island City.

3d Int. How was the wind and weather at the time, and what day of the week and month was it?

Ans. It was Wednesday, the twenty-first day of January. The wind was from the southward and westward, the wind quite light and the weather fine; we were very much obstructed in getting out of the harbor with the ice.

4th Int. Where was the bark Island City at the time, and when and how did you first discover her?

Ans. At the time, as near as I can judge, she was just about in a south direction, about ten miles distant from us, and near the Horse Shoe. We first discovered her by a spy-glass—quite indistinct by the glass.

5th Int. How many were with you, and who were they on board the Kensington?

Ans. Capt. John Norris, Capt. Thomas Gray, the mate of the Kensington, Taylor, I think, three men before the mast whom I can't name, and Mr. Hart, and Anthony.

6th Int. Now state in detail all the circumstances connected with your services to the bark Island City, referred to in this cause.

Ans. When we came to the bark she was at anchor, and they wished to be towed into harbor. Capt. Norris then gave orders for them to heave up the anchor. The crew of the bark, aided by the Kensington's crew, hove in the chain but there was no anchor attached, made fast the bark to the schooner and proceeded to towing at eight o'clock in the evening—towed until ten o'clock, and then came to anchor in consequence of ice; weighed anchor at one o'clock

in the morning and towed until four o'clock A. M. We then waited until daylight in consequence of much wind and heavy ice. At seven o'clock we weighed anchor in the schooner, ordered them to weigh anchor in the bark, which anchor they had shackled to their chain while running, and we proceeded to tow the bark until the wind became so heavy and there was so much ice that we were obliged to anchor at about nine o'clock in the morning. We then left the bark and proceeded to Hyannis harbor to return when the weather would permit, the bark being anchored one mile from the light-boat and within about three miles of Hyannis harbor, in good anchorage. Our risk in getting from the bark to the harbor was very great in consequence of the schooner's leaking, and large fields of ice to pass through and a gale of wind from the northeast, a gale such as I don't wish to be in again, and I can't be hired to be put again in the same position for no money. We succeeded in getting into harbor at twelve o'clock, noon, on the twenty-second. That included our round with the bark. We made the attempt to get to the bark, but the ice prevented—we couldn't get at her. On coming on shore Capt. Norris telegraphed to Boston the condition of the bark, and in consequence the Forbes came to her relief. The bark never dragged the anchor with which she was anchored at the time the schooner left until the Forbes took her. The Forbes took her on the evening of the twenty-fourth of January. The Forbes then made her appearance and took the bark.

We made our attempts to get back to the bark on the twenty-second and twenty-third, but couldn't on account of the ice.

7th Int. Who had charge of the crew of the Kensington during the time you were engaged with the bark Island City?

Ans. Capt. John Norris—being chosen manager and pilot by Capt. Gray.

8th Int. What time did you leave Hyannis harbor for the bark on the twenty-first?

Ans. At eleven o'clock in the morning.

9th Int. How long were you in getting to the bark?

Ans. From eleven o'clock in the morning until eight in the evening, precisely.

10th Int. How far had you to go, and why were you so long getting to her?

Ans. In the round which we took to get to the bark, in my judgment, it was fifteen miles, if not further; the wind being ahead and much ice to contend with.

11th Int. How was the wind and weather during that time?

Ans. The wind was from the south and westward and the weather good.

12th Int. How many anchors had the bark down when you arrived to her, and how do you know?

Ans. She was considered to have one, but in heaving in the chain, was found to have none; merely held by the chain on the bottom.

13th Int. How many masts or spars, and boats had she, and how was her rudder, if you know? State what was her condition generally.

Ans. She had neither mast, and no bowsprit, and no rudder, positively—no guessing whatever. She had but one boat, and was in a helpless condition, subject to be driven by the winds, whichever way they might have taken her.

14th Int. Where was the bark situated when you got to her; was she near any object, and if so, what, and how near, and which way from it?

Ans. The bark was situated one-quarter of a mile to the northward and eastward of the shoal part of the Horse Shoe.

15th Int. How was the wind and weather during the time you were engaged in towing her?

Ans. The wind and weather from nine o'clock in the evening until four in the morning was moderate, the wind southeasterly. When we weighed anchor at four o'clock, and from four till seven, the wind was strong from the northeast—there were heavy sheets of ice drifting upon us. After seven it was stronger if possible, from that time through the day. The schooner being leaky endangered our position very much. The crew were pumping at every quarter of an hour—we were all crew.

16th Int. If you had not taken the bark in tow, what would have become of her during that night? [Objected to.]

Ans. She must have gone on the Horse Shoe which she lay so near. She must have gone on shore, in consequence of having no anchor—merely a chain on the bottom.

17th Int. What was the position of the Island City when you left her, and how was it compared with her position when you found her?

Ans. Her position when we left her was in safe anchorage, having attached an anchor to her chain with which she anchored. She was in a safe condition compared with what we found her. In finding the bark, she was in a condition to be drifting without an anchor, and we left her anchored. We attached an anchor to her chain. She was considered safe, as the captain and crew had no objection to remaining on board.

18th Int. Have you heard any conversation of the captain of the bark in relation to the matter of the services of the libellants in this case? if so, when, and how, and what?

Ans. I heard Capt. Stevens, the captain of the bark, say to Captain Norris in the cabin of the bark, that he had no doubt but that he would be well rewarded for his services. I also heard Capt. Stevens say that the services rendered by the schooner and crew should be first attended to, and that they saved the bark and crew. I heard him say this after coming on shore from the bark in Hyannis. It was probably three days after the services were performed—it was probably a week after we performed the services. It was after the bark was towed into the harbor by the steamer.

19th Int. State the words of all that conversation.

Ans. I never heard any conversation between Capt. Stevens and Capt. Norris, except what I heard in the cabin of the bark before the service was performed, and at the time of hailing the bark. Captain Stevens said when asked about the services of the schooner and his condition, said that the schooner saved the bark from going upon the sandy bar of the Horse Shoe—to which he added that the bark must have been lost and probably the crew.

20th Int. To whom was the last said, or in whose presence?

Ans. It was said to Capt. Zenas Marston, Thomas Bearse, myself and others. I heard him state that same sentence on the platform between my loft and Mr. Bearse's store, and also at the town house at town meeting, the same thing.

Cross-examination by D. W. Gooch, Esq., Proctor for the steamer Westernport.

1st Cross-interrogatory. Have you been engaged in any other business except what you have stated? if so, what business, when and how long?

Ans. I have been engaged in no other business, except sail-making.

2d Cross-int. In how many fathoms of water did you find the Island City when you first went to her?

Ans. That I am not prepared to state.

3d Cross-int. Where did you obtain the anchor with which the Island City was anchored when you left her, and what was its weight?

Ans. The anchor was what they termed a stream anchor, which was on board the Island City, of about six hundred weight—six or seven hundred. I am most confident of seven hundred; which was shackled to her chain during the time of towing.

4th Cross-int. In how many fathoms of water was the Island City anchored when you left her?

Ans. That I am not prepared to state. She was at a safe and proper place for anchorage. I say she was safe because she rode out a gale of wind where we anchored her before the Forbes took her, and she never started.

5th Cross-int. Why did you leave the Island City when you did?

Ans. From the fact of there being a northeast gale of wind and large sheets of ice drifting down against us. We were compelled to anchor.

6th Cross-int. What do you mean when you say you were compelled to anchor?

Ans. I mean to say that we could not gain to windward with the bark and were losing ground by means of the heavy wind and ice.

7th Cross-int. Do you mean that you anchored the schooner at that time.

Ans. No, sir. We didn't anchor the schooner—but made effort

to get into Hyannis with the schooner after conversing with Capt. Stevens about going on shore.

8th Cross-int. State the circumstances of your leaving the Island City—whether you did so in haste or otherwise, and all that happened at or about the time of your leaving.

Ans. We did not leave her in haste. It was decided by all on board the bark and the schooner that safety required to anchor the bark. Capt. Stevens and Capt. Norris conversed in regard to going on shore, while the schooner run round the bark twice, waiting for Capt. Stevens to answer in regard to going on shore in the schooner; which he answered, that he would remain on board with the crew, considering that he was safely anchored; and asked Capt. Norris to return with the schooner as soon as the weather would permit, to which Capt. Norris and the schooner's crew readily consented.

9th Cross-int. Where was Capt. Norris at this time?

Ans. On board the schooner, hailing with Capt. Stevens, when near enough the bark to be understood.

10th Cross-int. Had you not just previously to this time parted the hawser with which you were towing the bark, and had anything been said to Capt. Stevens about leaving before you parted the hawser?

Ans. We parted the hawser in towing the vessel through the ice, and when parting the hawser we found it useless to attempt to get it again. Nothing had been said to Capt. Stevens about leaving before parting the hawser.

11th Cross-int. Describe particularly the position of the bark when you left her.

Ans. She was three miles and a half to the southward and westward of Hyannis Breakwater, one mile west of light-boat—I should have said *south*west of light-boat. The Breakwater was as near as any shore. The nearest rock was a mile and a half from the bark—that is the rock on which the southwest buoy is. The bark was, in my judgment, two or three miles southwest from the Bishop & Clerks—of course you wont expect me to judge like an old sea captain—it may vary a point, or a half point.

Cross-examination by Jno. D. Bryant, Esq., Proctor for the R. B. Forbes, and the Island City.

12th Cross-int. You say your danger on this expedition, was in part, caused by the Kensington's leaking. How extensive was the leak, what occasioned it, and how much water did she make?

Ans. The occasion of the leak was on occasion of the wind being heavy and carrying sail hard. I am not prepared to tell the number of strokes per hour. I have said we were compelled to pump the vessel once in fifteen minutes.

13th Cross-int. Have you ever before or since, been engaged in a similar service?

Ans. No, sir, not similar in that respect. I have been in a dan-

gerous position before at sea, but never in so great a one. I never was engaged in any salvage service before, and should not now, if not being forced to the matter, from the fact of saving life.

14th Cross-int. When was the Island City first seen from Hyannis?

Ans. On the morning of the twenty-first of January, 1857, I discovered her by looking carefully with the glass; others supposed to have seen her the evening previous.

15th Cross-int. Did she change her place from the time you first saw her till you went to her?

Ans. No, sir. To our observation she never so much as changed the position of her hull.

16th Cross-int. State particularly what was the weather from the time the bark was first seen till you went to her.

Ans. The weather was very moderate, and the wind light from the southwesterly.

17th Cross-int. You say you were prevented by the ice from reaching the bark after your return from her on the twenty-second. What was the nature of this ice, solid or floating, and how far did it extend?

Ans. The nature of the ice was solid, being inside of the Breakwater. It extended to the Breakwater, not extending outside of the Breakwater in the harbor.

18th Cross-int. Where was your schooner at this time, inside or outside the Breakwater?

Ans. Inside.

19th Cross-int. How do you know the weight of the anchor with which the bark was anchored when you left her?

Ans. From what I had heard said as to the weight of the anchor, and judging when seen.

20th Cross-int. Do you have frequently to handle anchors so as to judge readily of their weight?

Ans. I have handled sufficiently to judge of the weight of that anchor. I have hove up and let go more than one.

21st Cross-int. Are you familiar with the different anchoring grounds in the Sound, outside and in the neighborhood of Hyannis harbor?

Ans. I will say that I am familiar with the positions of anchoring, but not with the depth of water. I can tell when they are anchored in a proper place though I don't know the depth.

JOSEPH H. COFFIN.

The Deposition of John Norris, taken in behalf of the Libellants, before Elias Merwin, Commissioner, Sept. 22, 1857.

1st Int. What is your name, age, residence, and occupation?

Ans. My name is John Norris; age, forty-three years; residence, Hyannis; and I am a ship master.

2d Int. Were you or not on board the schooner Kensington at

the time of the services referred to in this suit? And if yea, state in what capacity, and where it was, and who else.

Ans. I was. I had charge of the schooner at the time. I fell in with Capt. Gray as I was going to the shore. He was then going home. I asked him if he was going to give it up. He said the risk was so great, and he was unacquainted, that he gave it up, and was going home. I then told him that I would take half the risk, and would take the schooner and go to the assistance of the bark, if he would. He said he would do so. It was Wednesday, the twenty-first of January, 1857. I then engaged Mr. Joseph Coffin and William Anthony. The rest of the men were attached to the vessel. We were nine, all told, and the libellants in this suit.

3d Int. How long have you been engaged as mariner, how long as master mariner, and what is your acquaintance with the coast and localities in question?

Ans. I have been at sea about thirty years. I have been master about fifteen years. I have run between New York and Boston for twenty years, before the mast, as mate and master. I have passed the localities in question about twice in four weeks for nine months in nearly every year of that time.

4th Int. Are you or not well acquainted with all the places referred to in this suit?

Ans. I am.

5th Int. State in detail all the circumstances connected with your services to the bark Island City, referred to in this suit.

Ans. I first discovered the bark on Wednesday, January 21st. I discovered a signal in distress from the steeple of the Universalist Meeting-house, but what it was on I could not tell. I then went to the shore, as I have already stated. We then took a boat and went aboard the schooner. It took us about an hour to get through the ice to the schooner. We then got the schooner under weigh, and broke through the ice, getting out of the harbor. While we were doing that we came near getting ashore twice. We had the wind from the southwest when we first started, about a four knot breeze; then it canted to south-southwest, and from there to south-southeast. When we were within six miles of the bark, we sent the boat, Capt. Gray with four men, to the bark. The boat got within a mile of the bark, and got up to the ice, and couldn't get any farther. The men from the bark made signals to the boat to keep on, but the boat could not on account of the ice, and returned to the schooner again, and got on board about sundown. We all then staid on board the schooner until we got up to the bark, and that was between seven and eight o'clock. We were hailed by Capt. Stevens, asking us if we came to his assistance. I told him we had. We then anchored the schooner, and went aboard the bark. Capt. Stevens asked me if I thought we could tow the bark into the harbor. I told him I thought we could, if we had a leading breeze and a free wind. Then Capt. Stevens said, the bark has no rudder, and he couldn't steer

the ship. I then told him we would tow him at the stern of the schooner. We would try him that way, and if we could not, we would haul him alongside. I then asked him what anchor he had down. He told me that he had his sheet anchor with one hundred and ten fathoms, I think, of chain; that he had lost his small anchor and chain in the gale. The bark had no spars, bowsprit, or rudder. The buoy from the bark on the east end of the Horse Shoe bore east-southeast one-quarter of a mile, as near as I could judge. The bark lay the nearest to the Horse Shoe, about eight hundred yards from the shoal. The Horse Shoe was nearly east and west. The western part of the Horse Shoe bore about west from the bark. I then told Capt. Stevens to heave up his anchor, and we would drop the bark to the stern of the schooner. He did heave the chain in, but there was no anchor there. He was very much astonished that he had no anchor attached. I would state, that previous to this, it was very calm for twenty-four hours before we went to the bark. It kept her in the same place, there being no wind. We then dropped the bark to the stern of the schooner, and made her fast with a large hawser and a large line. In the meantime a little breeze sprung up about south-southeast. We then got the schooner under way; that was about nine o'clock in the evening, I should judge. We were under way about one hour. The wind left us, and we anchored the schooner again. I then asked Capt. Stevens if he had any anchor on board. He told me that he had a stream anchor; I think he told me it weighed about nine hundred pounds. I then asked if he would have it bent on in readiness to use it if we wanted it. We lay there until one o'clock. The wind then sprung up to the eastward, quite a little breeze, a two or three knot breeze. In the meantime there was a good deal of ice passing by us with the flood tide, large pieces of ice, which sheered us around considerable. I then hailed the bark, and asked him if he had his anchor ready if we wanted to use it. He said he had. We then got the schooner under way and started for Hyannis. We towed the bark along, say about three, and three and a half knots. There was a good deal of floating ice that interfered. It would get between the bark and the schooner, and the bark would sheer over on the weather quarter, and that would swing the schooner off right before the wind. We would manage to get the bark astern by slacking one hawser and hauling tight on the other. We did so until four o'clock in the morning. At twelve o'clock that night it sat in a snow storm, and continued so through the night. At four o'clock the wind canted into the north-northeast, blowing fresh; that being ahead, we were obliged to anchor the schooner, and likewise the bark. The wind increased all the while, and at seven o'clock I hailed the bark to heave her anchor up, so that we could get the schooner under way. By that time the wind had increased to a ten knot breeze, and started the ice from the north shore, which fetched it down across our bow. We made sail, and in the act of doing so we parted our hawsers from the bark.

We then ordered Capt. Stevens to come to anchor, and he did so. We run back to the bark, and asked Capt. Stevens if he wanted any other assistance. His reply was that he wished us to anchor aside of him. By this time we had run into the ice and got stopped; we hauled the schooner's jib down, and backed her out of the ice. We run down under the bark's stern again, and told him we thought it wasn't safe for the schooner to lay there, by her being deep laden with coal, and leaky at that. We then told him we would go into the harbor, if we could find it, and get more help, and return back to him as soon as there was a chance to do so. All this time there was as thick a snow storm as ever was, the wind north-northeast, a two reef breeze. We were obliged to keep whole sail in order to press the schooner through the ice. I also told Capt. Stevens that I would telegraph to Boston for a steamer as soon as I got ashore. He said he wanted a steamer. In beating into the harbor, the ice stopped us some four or five times; we arrived at Hyannis somewhere, I think, near eleven o'clock. In going ashore, one or two of the men froze their fingers. I then went to the telegraph office and telegraphed immediately to Boston, saying that the bark Island City lay off Hyannis in distress. I then increased the help by three more men, and returned to the schooner again. We went on board the schooner and commenced getting under way; found that the ice had made so fast, the cold having increased, that we shouldn't manage her, if we went out, so we laid still that night. The next morning she was solid in the ice, so that we could go anywhere on the ice. We staid aboard all day Friday, making a sled to carry an anchor out on the ice—waiting to go to the bark—if we could get a chance, with an anchor and chain. We staid aboard that day and Friday night. Saturday morning it was mild, and we then saw the bark at anchor where we left her. That was the first time we see the bark since we left her Thursday forenoon, on account of the snow. We staid around all the morning waiting for a chance to get to the bark, but the sound was full of ice, and it was impossible to pass. At one o'clock we saw the steamer Forbes coming to her assistance. We then gave up all chance of getting on board the bark, and went ashore. The Forbes took hold of her Saturday afternoon. About the time that they got up her anchor ready to tow, it sat in with a thick snow storm, and we saw no more of her until we heard the Forbes blowing off steam in Hyannis harbor. She fetched her in within a half mile of the breakwater, and inside of one schooner, O. M. Patit. She lay there until Sunday morning, seven o'clock. Her condition there was as safe as any other vessel in Hyannis. The schooner O. M. Patit lay there some two or three days after the Forbes had left, then went to Harwich, and from thence to Boston. None of the other vessels that lay there were injured. The steamer R. B. Forbes started about seven o'clock Sunday morning, I should judge, and took the bark in tow—towed her about four miles, and then run into the ice. I then saw her again about half

past three Sunday afternoon. She had gained about one mile in the time, and after that I saw no more of her. It came on night then.

6th Int. What kind of a shoal is the Horse Shoe, dangerous or otherwise?

Ans. It is dangerous.

7th Int. What wind would carry the bark to it as she lay when you went to her?

Ans. From east to north, north-northwest would probably have dragged her the east end, on to Tuckernuck Shoal.

8th Int. Was there any such wind during the time you had her in tow?

Ans. There was. The wind at four o'clock was north-northeast, and there was wind enough to have carried her ashore.

9th Int. Had you not gone to her aid, what would have become of the bark during the night you had her in charge, in your opinion?

Ans. In my opinion she would have gone ashore on the Horse Shoe. If that had let her pass, she would have gone ashore on the Tuckernuck. Ice and wind will take a vessel over five or six feet of water where they draw ten or eleven. If she had gone over the Horse Shoe, the Tuckernuck would have taken her up, and that would have been a great deal worse than the Horse Shoe.

10th Int. In your opinion, situated as the bark was, could she have held on and not drifted during that night? How would it have been the next day?

Ans. She would not have remained afloat all that night.

11th Int. Have you any doubts upon this matter?

Ans. Not in the least.

12th Int. In your opinion, what was the condition of the bark as to danger, when you went to her, and what would have been her fate, if you had not gone, and why?

Ans. She was in every danger that could be; she lay with no anchor, to the mercy of the wind and ice, to go wherever it blowed her. She would have been a lost ship if we had not gone to her, because she had nothing to keep her from going ashore. She would have gone ashore on to the Horse Shoe first; if she was fortunate enough to beat over that, she would have fetched up on Tuckernuck, and there she would have remained.

13th Int. If she had gone on the Horse Shoe or Tuckernuck, could she or not have been rescued? And if so, how?

Ans. She could not have been rescued. No vessel passed through the sound for eight or ten days, I think. It was on account of ice that there was no passing.

14th Int. And was the weather in the meantime such as to injure her or not, and how was it?

Ans. It was such as would injure her, and was for some four or five days. The ice was making and the wind was blowing heavy, and the ice would have been passing her, and chafing her, and cutting of her up.

15th Int. Is there a heavy sea in those places generally, and was there then? How was it?

Ans. There is, and there was then.

16th Int. What would have been her fate? What, in your opinion, would have become of her?

Ans. She would have been a wreck. She would have been a total loss, my opinion is.

17th Int. What had been the wind and weather before you saw the Island City, as described by you?

Ans. The day before was moderate, a two or three knot breeze from the southwest. But just before, there was a gale that the bark was dismasted in.

18th Int. You speak of your vessel leaking while you had the bark in tow: how was that, and to what extent, and by what occasioned?

Ans. She always did leak, as I understood, in carrying sail—and probably it made her leak more in going through the ice. Probably it did. They wouldn't leave the pumps more than fifteen or twenty minutes at one time.

19th Int. Did you encounter any dangers while engaged with the bark? and if so, what, and to what extent?

Ans. I did; the extent, as I consider it great. The danger of losing the vessel and ourselves. The vessel was deeply laden with coal, and if we had been obliged to lay out in the sound, the vessel would probably have foundered, and we should have lost the vessel and ourselves. There was no way saving ourselves if the vessel had foundered.

20th Int. What was her condition when you left her; and how was it compared with the condition in which you found her? State your reasons.

Ans. She was left in as good a condition as a vessel need to be left in. She had an anchor weighing about nine hundred pounds, chain one hundred and twenty fathoms long; and I am satisfied that no gale of wind would have started her from that place. There was ice three or four inches thick, which that bark went through, and did not move her from her moorings at all, and a heavy wind besides. Her condition was altogether better than when we found her. We found her with no anchor, we left her with a good anchor; we took the bark from about eight hundred yards of the nearest part of the Horse Shoe, and left her about three miles and a half from Hyannis harbor, north shore, which would break all north and northeast winds. She was anchored in about five fathom water in good holding ground. I considered her as safe as in Hyannis harbor. I considered it safer, because she was clear of all the ice that would have been going out of Hyannis harbor. She would have been clear of all that.

21st Int. In your opinion would she have remained there until all danger was over?

Ans. I think she would.

22d Int. Was there any worse wind or ice for her after the Forbes took her, than there had been while she lay in the place you left her?

Ans. The ice I think was thicker when the Forbes took her than when we left her, for it was freezing weather all the while. I answered that wrong, not understanding the question. There was no more ice the day the Forbes took her than there was the day before. It was freezing all the time until the day the Forbes came. Then the weather had moderated, and the ice softened instead of thickened; and the ice was no thicker after the Forbes came than it was before.

23d Int. Was the danger where she lay any greater after the Forbes took her than it had been while she lay there, up to the time the Forbes came, and why?

Ans. No, sir, I think not. My reason is, that the schooner O. A. Patit left about two days after the Forbes, and went to Harwich, which she couldn't have done before the Forbes came. There was no passing.

24th Int. How was the quantity of drifting ice before and after the Forbes took the bark? When was it greatest, before or after?

Ans. The Sound was full of ice all the while. I couldn't tell when it was the greatest. There was no passing. I could see water only in little places.

25th Int. How was the wind before and after, and when greatest?

Ans. It blew a gale Thursday and Friday—moderated Friday night—Saturday nearly a calm—at noon a calm. After that it was fine weather for two or three days, with the wind to the westward.

26th Int. Have you heard the captain of the bark say anything about the services rendered the bark by your party? And if so, what?

Ans. All I heard him say was, that we ought to be rewarded handsomely. He told me himself that we rendered him great service.

27th Int. Did he ever say what would have become of his vessel if you had not gone to his aid? And what?

Ans. I never heard him say.

Cross-examination by Mr. Gooch.

1st Cross-interrogatory. Did you furnish any chain or anchor to the bark, and do you know the weight of the anchor which you have spoken of, except as you were told by Capt. Stevens?

Ans. I did not furnish any anchor or chain. I don't know the weight, only what I was told.

2d Cross-int. When you left the bark, did you not do so because your hawser had broken and you could do nothing more for her, and feared to remain longer?

Ans. We left the bark because we had parted from her, and couldn't render any assistance at that time, more than we had done.

3d Cross-int. Do you not think that a vessel like the Island City,

anchored with only an eight hundred pound anchor, with wind, weather, and ice as they were at that time, was in great danger at any place in the Sound?

Ans. She was in danger in any part of the Sound, and the harbor too. She would have been in danger in harbor—I won't except any harbor in the Sound. Several vessels went out of Hyannis harbor during the winter. The ice took them out.

Cross-examination by Mr. Bryant.

4th Cross-int. You say you could not return to the bark a second time on account of the ice. Could you not break out through the channel by which you came in? And why not?

Ans. We could not. The ice was hardening all the while, and the track shut up we came in.

5th Cross-int. Did it form solid ice; and, if so, how far did such ice extend?

Ans. It did. It extended a mile and a half, solid ice.

6th Cross-int. Were not the schooner O. M. Patit, and others you have spoken of as lying near the breakwater, in solid ice?

Ans. The O. M. Patit was in solid ice on Friday. On Saturday, about half of her was in solid ice, and the other half in cakes. She was surrounded by floating ice. The other schooners were in harbor in solid ice.

7th Cross-int. Did you then consider the O. M. Patit in a safe position?

Ans. While she lay in the ice, where she was up to Saturday morning, I did not. She was then got off into a safe position, where she lay to her anchors. I mean as safe as in any other harbor in the Sound.

8th Cross-int. How far was it from the place where you left the bark, to the place where the Forbes anchored her on Saturday night?

Ans. I should think about three to three and a half miles.

9th Cross-int. Where were the O. M. Patit and other schooners bound? When did they come into Hyannis, and when did they leave?

Ans. They were bound to Boston. All the schooners, except the O. M. Patit, were in three or four days. She came in Friday morning. She left, I think, Tuesday or Wednesday. The others didn't leave for some time after. I don't know what time they left.

10th Cross-int. After the Forbes left with the bark, when did you next hear of her, what and how?

Ans. I heard of her going along past Chatham, towing a light-boat, on Monday, the middle of the day. I heard by telegraph. Then I heard of her going into Provincetown that evening with a light-boat in tow.

11th Cross-int. Did you understand why she went to Provincetown? And, if so, why? [Objected to.]

Ans. I didn't at that time, but I did so afterwards. I understood she went after coal. JOHN NORRIS.

Deposition of William Anthony, taken on behalf of Libellants, before Elias Merwin, Commissioner.

1st Interrogatory. State your name, age, residence, and occupation?

Ans. My name is William Anthony, aged twenty-six years, residence Hyannis, Mass., and I am a seaman.

2d Int. Were you or not on board the schooner Kensington with John Norris and others, at the time the services were performed referred to in this cause?

Ans. I was.

3d Int. State when it was, and what was done, and all the circumstances pertaining to the same.

Ans. I came down that morning to the wharf. I cannot state the day or date particularly. It was about ten o'clock in the morning; Capt. Norris requested me to go off in the schooner Kensington along with him. There was a vessel in the bite of the Horse Shoe. He wanted to know if I would go off and save property, and probably save life, and render what assistance I could. I told him that I would, provided I thought there was any chance of our getting out of the harbor on account of the ice. The harbor was blocked up with the ice. He told me that the boat had cut her way ashore, and that probably with more help we could cut her way to the vessel. We went down the wharf, I agreed to go and do the best we could. We went down the wharf and got into the boat; we were some two hours in getting off to the schooner. We got aboard the schooner and got her sails up, got her under way. On account of the ice in the harbor, and the moderate wind, we got afoul of two vessels in the harbor, and we were as much as two hours getting out clear of the solid ice in the harbor which had set in; we got out clear of the ice, stood off to the southward, there was very little drift ice, until we got off about five miles from the harbor. We kept working her way through the drift ice, the wind still moderate. Night was coming on, we made an attempt to get to the vessel in a boat, we got nigh enough to see a flag. Three men belonging to the Kensington whose names I don't know, Captain Gray and myself got into the boat, leaving Captain Norris in charge of the Kensington. We went in the boat nigh enough to see a man on the wreck. We dare not go any further as night was coming on us, and a large body of ice. We were afraid to go any further, we turned round to go to our vessel, and a man on the wreck hoisted the flag up and down several times for us to take notice of the signal; we saw it but dare not stop nor go any farther, for night was coming on, and we were afraid of getting into the ice, and not being able to get out. We went back and got aboard of the Kensington a little after dark; night had set in about three-quarters of an hour. After we got aboard the schooner we

tacked her, a little more wind sprung up, so that about seven o'clock we were within about a cable's length or so of the wreck; Capt. Norris hailed the wreck, and wanted to know if he wanted any assistance. He told him he did, that he wanted assistance, if he could render him any, to tow him into Hyannis harbor. Capt. Norris told him that that was the harbor he should try to get him into, if there was any possibility of getting him in on account of the ice. The captain of the wreck [asked] if Captain Norris couldn't come on board of the wreck from the Kensington. Captain Norris told him that he should want to anchor the Kensington before he came in the boat. Then Captain Norris [asked] how his chain bore, so that he shouldn't get afoul of his anchor by letting go the schooner's. The captain of the wreck told him that it was slack water, and his chain was about up and down. He couldn't tell him exactly how his anchor bore from him, we sheered a little ways off from the wreck and let go our anchor; Captain Norris, Captain Gray, Mr. Coffin, me, and two more men went in the boat, aboard the wreck. Capt. Norris, I think, I am not perfectly sure, asked him what he would give for carrying him into Hyannis, if there was any possibility of getting him there. The captain of the wreck told him he couldn't make no bargain or agreement at all. Capt. Norris told him in my hearing that he would do all he could for him, and bring him and his cargo into a safe place, if not into the harbor, into a place where they would be safer than where they were at that present time, if it were possible, if the ice would allow it to be done. Capt. Norris, Capt. Gray, Mr. Coffin, and the captain of the wreck went down into the cabin and remained there about fifteen or twenty minutes; they came up, and gave orders to get a hawser from the bark to the schooner, as the ice would allow a boat to go between the bark and the schooner. We got into the boat, got the hawser aboard of the schooner. At Capt. Norris's request we went back in the boat, four of us to help them get their anchor up. I went forward and helped them to heave their anchor up, and Capt. Norris, and Mr. Coffin, I believe, stood somewhere near along midships of the vessel. The chain came up very easy. There was but one chain out; the chain came in quite easy, for one part rode over the other on the top of the windlass. The first officer called to one of the men to get that chain clear before the ice came on to the vessel and set taut on it. The mate went down to clear the chain; when he came down underneath the forecastle, he found the chain lying on the deck, and there was no anchor to it. The boat was called for to get another hawser from the wreck to the schooner. We got into the boat, the hawser was large, heavy, took us some time to get into the boat. Before we could get the hawser to the schooner, the wreck had swung round on to her, and was afoul of the schooner. With some little trouble we got the wreck shoved clear of the schooner. The wind still moderate, we tried to get the schooner under way. We got the schooner under way, the wind still very

light; it took us some time on account of the ice and the wind moderate to get the schooner before the wind; the wind was about southwest, I should think, I can't tell much about the wind, it varied through the night, and I didn't stop abaft much to look at the compass. There was no wind to do anything, and there was so much ice till about ten o'clock. We then came to an anchor. We had not been lying but a short while when it set in thick—commenced snowing—it kept on snowing very thick. When it began to breeze up about south, we got under way again. It kept breezy, and kept snowing thicker; the wind kept shifting around to the eastward, but I could not tell how it shifted; I had to attend to the pumps, and keep the deck clear of snow; it kept shifting, and the snow kept increasing. There was a great deal of ice; we couldn't make but very little way through the water, although there was then a whole sail breeze. The wreck we couldn't do anything with—we couldn't steer her; sometimes she would be on one side, and sometimes on the other. Whilst we had the wreck in tow, the wreck had a stream anchor aboard. She put that on to her chain. About four o'clock we had to come to an anchor. It blowed so heavy, and the drift ice came off so heavy from the land, that we couldn't work our way through it, in safety, to the schooner or the wreck. We got up so that we might hear the bell of the light boat. We couldn't hear it, and had to come to, and couldn't see more than a cable's length, and couldn't go any further, with safety, until daylight. The ice still kept running more and more—large bodies of ice. After daylight broke we couldn't see water. We got under way, made an attempt to get up nigher the harbor if possible. At that time it had come to blow so heavy that a body of ice came on to the wreck; we couldn't get through it. The wreck took a very heavy sheer with the ice, parted the bit where our hawser was made fast to the schooner, and parted the other hawser. The wreck let go his stream anchor. We stood off may be a quarter of a mile from him, and asked the captain of the wreck if he and his crew didn't want to come aboard of the schooner; we stood past him. He told us he would give us an answer when we came on the other tack. We couldn't go more than a quarter of a mile without losing sight of him, on account of the snow. When we came back he told us that he was satisfied his vessel was quite safe; she was under the North Shore, and he didn't think that there was any danger, unless it blowed very heavy, and a great body of ice came; that he would remain by her—that he was in quite a good harbor to where he had been. He said he wanted to know if we would make an attempt to come to him again as soon as there was any chance; that he would remain where he was quite happy. It blowed too heavy, and there was too much drift ice running to attempt to take hold of him again. He told us if we could work up and get to the harbor, to report him to Boston, and the situation he was in. Captain Norris told him he

would. The last thing he said was—he was quite satisfied—he was quite at ease with the vessel where she was then. We got into the harbor about noon. I suffered more that night than I had all my life going to sea. I never had such a cold night. I got my hands froze during the night, from the ends of my fingers to about the middle of my hands, perfectly white. We went ashore; Captain Norris wanted to telegraph to Boston the situation of the vessel. We were going out that night again, as soon as the wind canted so that we could get out to her. The ice got so thick in the harbor that afternoon and night that it was impossible to get out. We went aboard the schooner to get out again; we couldn't do anything—we couldn't get the vessel out on account of the ice. From the vessel you could see the wreck lying all the next day. Saturday afternoon, I believe, the Forbes came in sight; I remained there, in sight, till she took her in tow—it got towards evening, I saw I could do nothing, and went home. The Forbes towed her in as far as she could get on account of the ice—towed in inside of one vessel—but not fairly into the harbor; the ice was so thick she couldn't break it. The Forbes and wreck lay there till the next morning; she left the next morning; I saw no more of her for about a week; I then saw her in tow of the Westernport; she came into the harbor with the Westernport. The vessel that lay outside of the Forbes and wreck, after they came in, lay there about three days; I don't know how many days—two or three—and then went out as soon as the ice would permit. I believe this vessel lost an anchor there; there was an anchor and chain carried off to her. She came in in distress. I have been to sea twelve years.

4th Int. What was the condition of the wreck, when the Forbes brought her, at Hyannis harbor, inside of the vessel, as stated?

(Objected to.)

Ans. She was quite safe—perfectly safe. Our vessels make a common harbor there in the winter—where the Forbes brought her to.

Cross-examination by Mr. Bryant, Proctor of the steamer R. B. Forbes.

1st Cross-interrogatory. Where were you at the time of the conversation you have testified to, between the captain of the bark and the captain of the Kensington, just before she left for the shore?

Answer. I was in the forward part of the vessel.

2d Cross-int. Please to give the exact words of the reply of the captain of the bark?

Ans. When we came back he said he felt perfectly satisfied that he was in a good harbor, that he was under the North Shore; that if we would promise to come off to him, if there was any chance of doing anything for him, he would remain. We said we would. I

can't state every word that he said, I had something else to attend to; I had the pumps to attend to, and clearing snow off the deck.

his
WILLIAM + ANTHONY.
mark.

Attest: E. MERWIN.

Depositions taken in the case of Joseph H. Adams, President, Libellant, vs. *The bark Island City and Cargo, and used in the present cause.*

Deposition of Griffith Morris, taken on behalf of Joseph H. Adams, President, &c., before Wm. S. Dexter, Commissioner, Oct. 12, 1857.

1st interrogatory. State your name, age, residence, occupation, and how long you have followed the same.

Ans. My name is Griffith Morris; age, forty-six; residence, East Boston; occupation, master mariner; I have been to sea ever since I was twelve years of age; I have sailed out of this port as master twelve years, as master of the R. B. Forbes.

2d Int. Were you, at any time previous to taking command of the Forbes, a pilot? If so, how long?

Ans. I was about five years in pilot boats before I took charge of the Forbes, as boat keeper and as warrant pilot.

3d Int. Are you, as such, familiar with this coast—with the coast of Nantucket, and with the Vineyard Sound?

Ans. I am somewhat acquainted with them.

4th Int. Were you in command of the R. B. Forbes on Friday, the 23d of January last, and from thence to the 7th of February last, and how were you occupied during that time?

Ans. I was then in command of the Forbes. From the 1st to the 23d of January, I was in Provincetown harbor, and about the Cape. I towed several vessels into the harbor during that time. On the 23d January, in the afternoon, I received a telegraphic despatch from Peirce and Bacon, asking me to go round into the Vineyard Sound for the Island City, which was off Hyannis, dismasted, supposed to be adrift, and with her rudder gone. I left Provincetown on the morning of the 24th, between 4 and 5 o'clock; arrived at the bark between 2 and 3 P. M., the same day. We found her about three miles to the southward and westward of the light-boat, off the Bishop and Clerks. We went alongside of her, made a hawser fast, and went ahead of her, kept the boat going slow. At the same time they were heaving at the windlass, and finally got her anchor, and proceeded towards Hyannis with her. We ran the boat into thick ice, found that she couldn't make any headway through it, and anchored the bark and the boat. It was snowing thick, with the wind moderate from southeast. I was close in before I saw the thick ice. We ran into it ten or fifteen feet, and I had to tell them to sheer the

bark, so that she shouldn't run into us. I anchored during the night. There was a good deal of ice that came out with the eastern tide and struck pretty hard against the bark and the boat. On Sunday morning, the 25th, I got under way with the bark in tow, and went over to the south channel. I got over at noon; the tide turned to the westward, bringing very heavy ice with it from the eastward. I anchored the steamer and bark, and waited until the tide turned to the eastward again, about five o'clock in the afternoon. We then got the anchors and started down the east channel, the wind being about west-northwest, clear weather, but cold, and making ice fast. About five o'clock next morning we struck aground on Point Rip off Great Point, Nantucket. After lying there an hour and a half or two hours, we got clear, and tried to make to the northward and eastward. The ice was so thick that we could make no headway through it; parted the tow hawser; found the coal was getting very short, and that it was necessary to go to Provincetown for more coal; so we anchored the bark about five miles east from Nantucket Great Point, in eight or nine fathoms water. We paid out all the chain she had, securing the end to the foremast or to the bit; the steamer being alongside, all hands came on board from the bark, and we left for Provincetown, calculating to be back at the bark next morning. We went out from the bark about east until Sankaty Head bore about southwest, and we got out of the ice; there we saw the light-boat hanging out signals of distress. I bore away to the eastward until I reached her, took her in tow and carried her towards Provincetown, the wind at the same time canting towards southwest. We arrived at Provincetown about nine o'clock P. M. There I found that the vessel which was to have left Boston some days before, with coal for me, had not arrived at Provincetown. I bought all the coal I could get in the town—some twenty-five or thirty tons of stove coal—on Tuesday and Tuesday night. We left about four o'clock on Wednesday morning for the bark Island City, the wind being to the southwest, driving all the ice from Barnstable Bay; I was four or five hours getting by the Race, in consequence of the ice. When I got opposite the Highland Light, the engineer reported that the coal was burning up like straw, and wouldn't hold out to get to the Island City; so we had to return to Provincetown. We remained there until Friday morning, when coal arrived from Boston. We took in coal on Friday, and left Friday night at twelve o'clock. We arrived at the place where the bark had been left about eight or nine o'clock on Saturday morning; found that she had been taken from her anchorage; went over to Monumoy, was told there that she had been taken from the place where she was at anchor, over towards Hyannis by a steamer. On Sunday morning we got under way from Monumoy, and went over to Hyannis harbor, and went alongside the bark: we put the crew of the bark on board of her. We had brought with us a large anchor for the bark, and I was about to put that on board of her but the captain of the Wes-

ternport refused to permit us to do so. Mr. Bacon, one of the owners, came down with a bond, and offered it to the captain to release the bark. The captain refused to take it, and hauled the bark alongside the wharf at Hyannis. After lying there three or four days, the bark was released, and was towed round to Boston by the R. B. Forbes, arriving at Boston on Friday night about midnight.

5th Int. Was the course you took, after leaving the bark off Great Point on Monday, the 26th, the direct course for Provincetown? If not, why did you take such course?

Ans. It was not. I had to go to sea, to clear the ice, and also the Great Round Shoal.

6th Int. If you had not coal enough to carry the bark to Provincetown, how could you take in the light-boat as you have stated?

Ans. When I got to the light-boat, I was out of the thick ice; besides which, the wind had canted, and we had a fair wind up to Race Point. Both the steamer and the light-boat carried sail up to there.

7th Int. Did you take the bearings of the place where you left the Island City, off Great Point.

Ans. I did.

8th Int. Please to point out said place on the chart?

Ans. The light bore due west from us. It was about the mark "C" on the chart.

9th Int. Were you compelled to anchor the bark at that spot?

Ans. No. I could have carried her to sea; but if I had I shouldn't have coal enough to take the boat to Provincetown; and I considered that place about the safest place round there to leave her.

10th Int. Why did you consider that anchorage safest?

Ans. Because the ship was under the lee of Great Point, and under the lee of the Rip; and because on the north, the Great and Little Round Shoals cut off the sea from the east.

11th Int. Had you any other reason for leaving the bark than want of coal? and was it your intention to return and resume the towing of said bark?

Ans. I was also short of provisions. I had been supplying the bark ever since I got to her, and had also supplied a ship and two barks previously, which were short of provisions. It was my intention to return and resume the stowage.

12th Int. Why did you not carry the bark into Hyannis harbor, as you first intended?

Ans. I carried her as far in as I could get.

13th Int. Why did you not get further and leave her in Hyannis?

Ans. Because the ice was so thick that we couldn't get in there.

14th Int. Were there, at the time, any vessels in Hyannis harbor?

Ans. Yes. There were vessels there—frozen in.

15th Int. Were those vessels inside or outside of where you lay on Saturday night?

Ans. There were one or two vessels outside of the ice. There were vessels in the harbor. I don't know what they were.

16th Int. How was the ice in the Sound on your passage to the bark on the 24th January, and how was the weather? Was the ice making or not?

Ans. The ice was broken. Some of it was in hard cakes, over on the north shore. When I got to the bark she was riding through it very easily. The weather was clear in the morning, wind west-northwest, light. In the afternoon it canted to the southeast and snowed; very little wind. The ice was making during the day.

17th Int. What was the condition of the Island City when you found her, as to spars, rudder, &c., and how was she anchored?

Ans. She had lost her rudder; all three masts were cut away; she had two chain cables with a stream anchor on them, the two cables shackled together.

18th Int. How was the ice on the next day, the 25th, during your passage through the Sound, as compared with that of the preceding day? Was it drift or field ice, and how thick was it?

Ans. The ice was very thick on Sunday, thicker than the day before; the southeast wind had brought it over from Tuckernuck Shoal and Nantucket Bay. It was field ice, but it was drifting. In some places it was five feet thick, in others not more than five inches; it was very uneven.

19th Int. What is the power of the R. B. Forbes? Is she a double or single engine boat? How is she adapted for encountering such ice as you have described?

Ans. About 380 horse power, or 400 with extra steam. She has two engines and two propellers, one under each counter. She is the only boat that is adapted for encountering ice, being built of iron, expressly for that purpose.

20th Int. What steam do you carry in your ordinary service with said boat?

Ans. From 25 to 28 pounds.

21st Int. What steam did you carry while towing the bark through the ice, as you have described?

Ans. From 35 to 40 pounds.

22d Int. Would it have been possible for a sailing vessel, or a common steam vessel, not of iron, to have carried said bark through the ice on Saturday and Sunday, January 24th and 25th?

Ans. No, sir; it couldn't have been done.

23d Int. [Objected to by Mr. Scudder, for owners and crew of the Kensington.] What, in your opinion, would have become of the Island City in her then condition, if she had not been taken by you from the place where you first found her—outside of the Bishop and Clerks light-boat?

Ans. I think she would have gone adrift. Anything would have gone adrift that Sunday. She and the Forbes did both drift, with a big anchor down.

24th Int. Was your service, when towing the Island City, attended with unusual hardship and exposure to your men?

Ans. It was. It was a hard time for everybody.

25th Int. What occasioned greater labor and exposure to your men in this, than in your ordinary service?

Ans. When we anchored that Sunday, the ice was so thick that we had to heave the anchor home with eighty fathom of chain out. It was a hard job and a very cold one.

26th Int. How were the wind and weather on Friday, January 30th, the day you have stated that you took your coal on board?

Ans. The wind was light, from southeast, east, north-northeast, very light. It was a fine day, sunshine. In the harbor the wind was off the land. There was no sea at all.

27th Int. At what time did you leave Provincetown for the bark, after getting said coal on board?

Ans. After twelve o'clock at night. The wind was about northeast—a good whole sail breeze. It was somewhat cloudy—the stars out sometimes.

28th Int. State particularly how were the wind, weather and sea, during you passage to the bark's anchorage.

Ans. When I got down to Nantucket Shoals, the wind was about northeast, a whole sail breeze, such as a sailing vessel would go seven or eight miles in, with it free. I had sails on the boat all the time. The weather was clear and fine. There was not much sea on; such a sea as such a breeze would usually make. I came through Pollock Rip, when there was no buoy or light-boat there; a thing I shouldn't have done if there had been much sea.

29th Int. About what is the distance by the course you took, and at what time did you reach the place where you had left the bark?

Ans. From sixty to seventy miles. I reached the place between eight and nine o'clock A. M.

30th Int. [Objected to.] In your opinion, would said bark have remained where you left her, until your return, if she had not been taken by another vessel?

Ans. I have no doubt she would.

31st Int. What is the value of the R. B. Forbes?

Ans. Her first cost was eighty-five thousand dollars.

32d Int. How is she ordinarily employed?

Ans. In towing ships on the coast, between Maine and New York, and wrecking.

33d Int. When employed in towing ships from one port on the coast to another, about what is she paid per hour?

Ans. From $12 to $15, while under steam; while not under steam, half-price.

34th Int. When she goes by the job, does she usually average greater or less wages than this?

Ans. It depends on the weather a good deal. Sometimes we make a quick trip—sometimes a slow one.

35th Int. What was the demand for steam service while you were

engaged with the Island City, as compared with other times; and how were the rates of pay?

Ans. The demand was very great at the time. Boats were paid $400 to $500 a day. Some of them offered $1000 per day of twenty-four hours.

36th Int. Is the rate of compensation of the Forbes ordinarily greater or less than that of the boats of which you have just spoken?

Ans. Usually greater.

Cross-interrogatories propounded on behalf of owners and crew of Westernport.

1st Cross-interrogatory. Who are the owners of the R. B. Forbes, and in what business was she employed in January and February last; and on whose account?

Ans. She is owned by the Relief Steamboat Company. She was then employed in towing ships on the coast, sometimes by the underwriters, sometimes by the merchants.

2d Cross int. Who are the members of that company? Is it composed of certain insurance companies in Boston? If so, what companies?

Ans. I don't know by what offices she is owned. I have a Board of Directors—Mr. Smith, of the Merchants' Office; Isaac Sweetser, President of the Washington Insurance Office; Joseph Balch, of the Boylston; and Col. Adams, of the New England Insurance Office.

3d Cross-int. You say that the hawser, with which you were towing the bark, broke, and that then you anchored the bark. Did you leave the bark where she was when the hawser broke?

Ans. Pretty near the place.

4th Cross-int. Did you tow the bark any after the hawser broke?

Ans. No.

5th Cross-int. Then you left her where she was when the hawser broke, did you? Was she not fast in the ice at the time?

Ans. Within a couple of miles of it. It took some time to get the hawser in; and the steamer was alongside the bark. Both the bark and the boat were in large fields of broken ice, but when we let go the anchor the bark rode through it a good way.

6th Cross-int. Did you not leave the bark as soon as you could after the hawser broke? Did you move the bark by the steamer from the place where she was when the hawser broke?

Ans. We did not leave her as soon as we could. We did not move her by means of the steamer after the hawser broke.

7th Cross-int. Did you not find it difficult to tow the bark, from the fact that she had no rudder?

Ans. Not from that cause. I found no difficulty from that.

8th Cross-int. What caused the hawser to break at the place you have mentioned?

Ans. The hawser was chafed by dropping into the ice when slack, and being pulled out again.

9th Cross-int. What provision, and how much, had you on board the Forbes when you left the bark?

Ans. We had very little. I couldn't state the exact quantity; the steward looks after that. There was very little of anything left —bread, water, flour, or anything.

10th Cross-int. What provision did you take on board the Forbes before you left Provincetown on Wednesday, and from whom did you obtain the same?

Ans. I don't remember taking any.

11th Cross-int. Did you take any provision or water on board the Forbes while you were at Provincetown, between Monday and Saturday?

Ans. I can't say. I know we took water aboard at Provincetown and at Hyannis.

12th Cross-int. Do you not know that no provisions were taken on board the Forbes while you were at Provincetown?

Ans. I know there were provisions taken aboard at Provincetown after we returned there; quite a large quantity.

13th Cross-int. When were they taken on board, and where were they obtained?

Ans. After we returned from the bark, I don't know at what time. They were obtained from Mr. Abel Smith, of the Central wharf store or Union wharf store. I don't remember which it is called.

14th Cross-int. Had the ice gone out of the Sound and from around Nantucket, when you got to where you had left the bark?

Ans. The ice was all gone, from Pollock Rip to Sankaty Head. It was clear water everywhere.

15th Cross-int. Why did you remain at Monumoy from Saturday until Sunday morning, before going to Hyannis?

Ans. I went into Monumoy to find out where the bark was. I found some men there who said they had seen her that morning going up towards Hyannis. We had something to do to our boilers —so I told the engineer we would stop there that night.

16th Cross-int. Did you remain there to repair your boilers, and for no other reason?

Ans. Not particularly. We might have gone right to Hyannis. I stopped to see the men who had been seeing her every day—and finally stopped over night.

Further Interrogatories on behalf of Joseph H. Adams, Petitioner.

1st Int. [Objected to for form.] You have stated, in answer to the 3d and 4th cross-interrogatories, that you left the bark near the spot where you parted your hawser, and did not tow her afterwards. Could you, or not, have made fast to her again and carried her to a different place, if she had not then come to what you considered the best anchorage?

Ans. I could.

2d Int. Have you any interest, directly or indirectly, in the result of this suit? How are you paid for your services as commander of the Forbes?

Ans. None whatever. I am paid by the month for my services.

3d Int. If, as you have stated, you considered the place where you left the bark, off Great Point, to be the best anchorage in that vicinity, please give your reasons for that opinion.

Ans. The vessel was under the lee of Great Point, and the tide running out from Nantucket Bay, runs to the north and makes a lee under the point when you are out east from it. Then the Stone Horse and Great and Little Round Shoals are to the north of that place, and Great Rip and Bass Rip to the southeast. There is a connection between all those shoals. There isn't over five fathom of water anywhere between them. The place where I left the bark is the deepest water there is round there. I considered that to be the only place where a vessel would hold, because she couldn't go either way without going up hill from there.

GRIFFITH MORRIS.

Deposition of John Fanning, taken on behalf of Joseph H. Adams, President, &c., before Wm. S. Dexter, Commissioner, Oct 12, 1857.

1st Interrogatory. State your name, age, residence, and occupation.

Answer. My name is John Fanning; age, thirty-five; residence, East Boston; occupation, mate of the R. B. Forbes. I have been so six years. I have been to sea fifteen years.

2d Int. Were you on board the R. B. Forbes on Saturday, the 24th of January last?

Ans. I was.

3d Int. How was she then employed?

Ans. We were towing the Island City. We left Provincetown at four A. M. that day, reached the bark about three or four o'clock P. M., and took her toward Hyannis.

4th Int. What was the condition of the Island City, and how was she anchored, when you found her?

Ans. She had all her spars gone, and was riding to one anchor and about 110 fathom of chain.

5th Int. How were the wind, weather, and sea during that day?

Ans. The wind was moderate through the day. Towards four o'clock, it came in from southeast and snowed; there was no sea; the weather was warm.

6th Int. What did you do with the bark on Saturday?

Ans. We took hold of her, and took her towards Hyannis. We couldn't get into the harbor.

7th Int. How was the ice on your passage to the bark, and while towing her on Saturday?

Ans. The ice was light.

8th Int. What did you next do with the bark?

Ans. We anchored her; gave her what chain we thought would hold her. The next day the wind northwest, and brought the heavy ice down, and we were afraid it would drive her on to Point Gammon; so we got under way and towed her up by the Horse Shoe until the tide turned, and then the ice got so hervy that we couldn't tow against the tide; so we anchored.

9th Int. How long did you lie at anchor, and where did you finally leave the bark?

Ans. We lay at anchor six hours. We left her anchored off Sankaty Head—between that and Nantucket Great Point. I don't know exactly the bearings.

10th Int. When did you leave her there, and why?

Ans. About eleven o'clock on Monday; for want of coal.

11th Int. How was the ice on Sunday and Monday, compared with the ice on Friday and Saturday?

Ans. The ice on Monday was not near so heavy as it was on Saturday and Sunday.

12th Int. Whether or not was the towing of said bark attended with unusual labor and exposure to your crew?

Ans. It was.

13th Int. State in what way.

Ans. The cold weather and ice made it necessary for us to be up all the time. We couldn't get any rest.

14th Int. Was the ice in fields, or was it loose drift ice? How thick was it?

Ans. It was field ice. In places it was three or four feet. In some places it grounded in two fathom water.

15th Int. Whether or not was the machinery of your boat subjected to unusual strain.

Ans. It was. The engineer said so. I hadn't much time to look at it.

16th Int. Were you, or not, obliged to clear away the ice from the steamer's bows?

Ans. Yes; and from alongside too. I had to get over the side and cut away with an axe, while some of the men were cutting on the other side.

17th Int. Whether or not is the Forbes peculiarly fitted for such service; if so, how?

Ans. She has extra strength of hull and extra power for a boat of her size.

18th Int. Is she of wood or iron? Has she double or single engines?

Ans. Her hull is iron, with a wooden deck. She has double engines.

19th Int. Would it or not have been possible for a steamboat with a wooden hull, or for a sailing vessel, to have taken the bark through that ice?

Ans. No; the ice would cut her through, I think.

20th Int. If the bark had not been taken by any vessel from the place where you found her, would she, in your opinion, have lain in safety until the ice cleared away?

Ans. I don't think she would. The ice was too heavy there when the wind got round to northwest.

21st Int. What would have become of her?

Ans. The ice would take her wherever the tide and wind set. She might have gone clear of the Bishop and Clerks, or might not.

22d Int. Did you, in your passage out of the Sound, at any time part your hawser? If so, when?

Ans. We did; on Monday.

23d Int. How long before you left the bark did that happen?

Ans. About two hours.

24th Int. Did that render it necessary for you to leave the bark?

Ans. No, sir.

25th Int. Did you again make fast to her by the hawser?

Ans. No.

26th Int. Was there anything to prevent your doing so, if you had wished it?

Ans. Nothing.

27th Int. Did you, while towing said bark, supply her with provisions?

Ans. We did.

28th Int. Whether or not were you short of provisions when you left said bark.

Ans. We were.

29th Int. Did you procure additional provisions before returning to her? if so, where?

Ans. We did; at Provincetown.

30th Int. When did you return for the bark?

Ans. I don't recollect the date.

31st Int. Did you make the passage back from Provincetown in daytime or night?

Ans. Early in the morning; about four o'clock, I think.

32d Int. How was the weather during that passage?

Ans. The weather was good until night; then it rained a little.

33d Int. How was the sea?

Ans. There was no sea to speak of; a little roll.

34th Int. When you left the bark at anchor off Great Point, did you, or not, expect to return to her?

Ans. Yes.

35th Int. Have you any interest, directly or indirectly, in the result of this suit?

Ans. None.

Cross-interrogatories on behalf of owners and crew of the Western-port.

1st Cross-interrogatory. When you took the bark on Saturday, she had all her chain out and her anchor down, did she not?

Ans. She had.

2d Cross-int. Why then, do you think she would not have remained where she was, if you had not taken her?

Ans. Because the ice was not so heavy that day as it was the next day.

3d Cross-int. How heavy do you think the ice must have been to have taken her from where she was when you first went to her?

Ans. The light-boat didn't hold on, with all her anchors; and of course the bark couldn't with one.

4th Cross-int. After the hawser broke on Monday, you came back to the bark with the steamer, took the men on board, and left—did you not?

Ans. We did; after securing the bark.

5th Cross-int. Was there anything else done on board the bark except to let the anchors go? If so, what?

Ans. The captain did something in the cabin; I don't know what. We went alongside and made fast—let go the bark's anchor—paid out all the chain—then dropped the boat astern. She held on and held the boat until we left. I went aboard of her with a lead line, to see if she was holding.

6th Cross-int. Did you let go the anchor of the bark as soon as you got back to her?

Ans. Not until we had got alongside and made the boat fast; I believe we let her drift a little way after that, to get the bearings of the Lights right.

7th Cross-int. Did you not keep steam up on board your boat all the time?

Ans. Yes.

8th Cross-int. How thick was the ice around you at this time?

Ans. It was field ice; not near so heavy as it was the day before. I don't remember how thick it was.

9th Cross-int. Was it not as heavy as it had been at any time during Monday?

Ans. No.

10th Cross-int. How thick had it been at any time on Monday, around the steamer?

Ans. I couldn't say exactly. We saw it ground in shoal water, which might have been six to ten feet deep. I didn't notice how thick it was around the steamer, because while I was cutting it, I had to jump aboard as quick as the boat started it.

Further Interrogatories on behalf of Joseph H. Adams, Petitioner, and Answers.

1st Int. Whether or not was there any of this grounded ice you speak of, in sight on Point Rip, off Great Point, Nantucket?

Ans. There was. It was piled up there so high that we could hardly see the land beyond it.

2d Int. At the time you have stated that the bark did not drag, with the steamer fast astern, was the steamer kept up by her steam, or held by the bark?

Ans. Her engines were stopped; and the propellers held a good deal of water. She was held by the bark.

JOHN FANNING.

Deposition of James Crowell, taken on behalf of Joseph H. Adams, President, &c., before Wm. S. Dexter, Commissioner, Oct. 13, 1857.

1st Interrogatory. State your name, age, residence, and occupation.

Answer. My name is James Crowell; age, sixty-five; residence Chatham, Mass.; I am a mariner.

2d Int. How long have you followed the sea, and in what capacity?

Ans. I have been to sea fifty years; in all capacities, from cook to captain; about twenty-seven years as master.

3d Int. On what voyages have you principally sailed as master?

Ans. To the Mediterranean, and coast-wise here; between this port and Baltimore, and New Orleans.

4th Int. What is your present employment, and how long has it been such?

Ans. I am mate of the Bishop & Clerks light-boat, stationed off Hyannis harbor; I have been mate there since January 1st, last. I was on board of her three months before that.

5th Int. Where were you in January and February last?

Ans. On board the light-boat.

6th Int. Where was she then stationed?

Ans. She was stationed west, half north from the Bishop & Clerks; about a mile to a mile and a quarter distant; about four to four and a half miles out from Hyannis harbor.

7th Int. Did you see the bark Island City during any part of that time? If so, when?

Ans. I first saw her bearing south-southeast from the light-boat, about seven or eight miles off, her masts all gone. The next time I saw her was after a blow, next day after I first saw her. She was then about south-southwest from us, about two and a half miles off; I saw her again, on the third day after, towed into Hyannis by a steamboat.

8th Int. How was the weather at these times?

Ans. When they towed her in, there was a snow storm from southward and eastward. The first time I saw her, there was a moderate southerly wind, clear weather, and tolerably warm for winter time. That night there came on a storm with a violent gale from the north. The second time I saw her, after this gale, it was very cold with northwest wind, and vapor on the water.

9th Int. Whether or not was the ice making, from the first time you saw the bark until the steamer took her?

Ans. The first part of the time, it was not, the latter part of the time it was making very fast. The weather was very cold on Friday.

10th Int. In what direction, and how far, did the steamer take the bark when you first saw them?

Ans. She took her from where she was, two and a half to three miles outside the light-boat, into Hyannis harbor, as far as they could go on account of ice.

11th Int. How was the ice at that time in Hyannis harbor?

Ans. It was thick clear out to where we lay.

12th Int. Whether or not was the inner harbor frozen solid?

Ans. It was.

13th Int. How far out did that solid ice extend?

Ans. As far as one could see.

14th Int. When did you next see the bark after the steamer towed her into Hyannis harbor, and under what circumstance?

Ans. I saw her next morning, Sunday, close by the light-boat, going towards the southeast, in tow of the steamer; we saw her nearly all day, appearing but to make but slow progress.

15th Int. What steamer was it which took her into Hyannis harbor, and out again on Sunday morning, as you have stated?

Ans. I don't know except by hearsay.

16th Int. How were the weather and ice on Sunday, the 25th?

Ans. The weather was good, pretty warm; the ice was very thick.

17th Int. Was the ice field ice or broken; and was it adrift or stationary?

Ans. It was field ice; drifting with the current, first east and then west, with the tides.

18th Int. How large bodies of it were together, and how thick was it?

Ans. In some places there were thirty acres of it together; all the way from six inches to four feet thick, the hardest ice appeared to be about a foot thick.

19th Int. Would this ice endanger vessels moored in the Sound?

Ans. Yes.

20th Int. Did you know of any vessel being carried adrift by it?

Ans. None but our light-boat. I heard of others but didn't see them. Our boat dragged any way that the current set.

21st Int. On what day were you carried adrift, and where did you go?

Ans. We commenced drifting that Sunday, and Monday morning we dragged over the Bishop & Clerks, the ice heaving her down on her broadside. The wind was moderate from the southward.

22d Int. Was this drifting ice alone sufficient to carry your vessel adrift and roll it over, as you have stated?

Ans. It was.

23d Int. What moorings had you then out?

Ans. We had a mushroom anchor of thirty-five hundred pounds with ninety fathoms of one and one-half inch chain.

24th Int. Was the place where the bark lay, when the steamer you have spoken of took her, more or less exposed to the action of the tides and ice than where your light-boat was moored on Sunday?

Ans. It was more exposed.

25th Int. Would you or not have considered a vessel, anchored at the place where said bark lay when the steamer first took her, safe on that Sunday, with an eight hundred pound anchor, and one hundred and ten fathom of chain out?

Ans. I should say that she would have gone adrift. The ice would have carried her adrift.

26th Int. And if she had gone adrift, where would she have been likely to go?

Ans. Either on the shoal called the Handkerchief or on that called the Horse Shoe.

27th Int. Which would you have considered safer from ice, the place from which the steamer first took the bark, or the point marked "C" on the chart now shown you?

Ans. The place marked "C" on the chart.

28th Int. State why?

Ans. Because at the place marked "C" there is an eddy, and the tide has less force where she lay at the point "C" than further out to the northward.

29th Int. What makes this eddy at point "C"?

Ans. The current from the westward takes a little northeasterly course there. From the south part it comes and goes away down towards Great Round Shoal, so that it leaves an eddy at this place.

30th Int. How were the weather, ice, and sea on Friday and Friday night, January 30th, as compared with Sunday, Monday and Tuesday previous?

Ans. The weather was very good on Friday; in the evening it clouded up. It was moderate. The next morning there was a leading breeze from the eastward. We were in the harbor, and couldn't tell about the ice and sea; but the ice appeared to be all broken up, and vessels passing about. Two steamers and a bark passed to the eastward that day, by Hyannis harbor. The weather wasn't so bad on Friday the 30th, as on the Sunday, Monday, and Tuesday before, for carrying vessels adrift. The ice was more broken.

31st Int. Do you know what sort of a place for anchorage there is at the point "C"; what bottom, and how a vessel would hold there?

Ans. I don't exactly know. I never was at anchor there.

32d Int. Was there or not, in your opinion, any wind, ice, or sea on Friday or Saturday, the 30th and 31st, to move a vessel from said point "C" which had lain there in safety since the Monday previous?

Ans. I should think not.

Cross-interrogatories, propounded on behalf of John Norris & als.

1st Cross-interrogatory. Did you at the time, keep any memorandum of the weather and winds, and the events and circumstances of which you have testified? If so, where is it?

Ans. I kept a memorandum of the winds, weather, and occurrences. I put them down every four hours; it was in the log-book of the light-boat. That is now aboard the light-boat.

2d Cross-int. Will you make a transcript of the matters to which you have testified, contained in your log-book, and send it to the magistrate in this case, to be annexed to your deposition as a part thereof?

Ans. I don't want the trouble of it.

3d Cross-int. Will you do it as requested?

Ans. No. I will assist anybody who will come with any explanations of it that I can give.

4th Cross-int. Do you refuse to produce the transcript requested?

Ans. No, sir.

5th Cross-int. Then will you do it as requested?

Ans. I have said that I wouldn't copy it. If anybody will come aboard I will show them the log, and assist them; but I shan't copy it myself.

6th Cross-int. When were you first informed that your testimony would be required in this case?

Ans. About a week ago; I don't remember the exact day.

7th Cross-int. Who first talked with you about it?

Ans. Mr. Bryant.

8th Cross-int. Have you not stated some things here which are not contained in your log-book?

Ans. My suppositions about the vessel's anchorage are not in the log, but all about seeing her, and where she was, and the winds and weather, is in the log.

9th Cross-int. On what day of the week and month did you first see the Island City, and where was she then?

Ans. It was in the month of January, I couldn't tell the exact day of the month. It was about eight o'clock in the morning; her masts were all gone, and her colors set on a pole. I don't remember now what day of the week it was; she then bore south-southeast from us, distance seven or eight miles.

10th Cross-int. Is not that stated in your memorandum in the log-book? I mean the day of the week and month inquired about.

Ans. It is.

11th Cross-int. Then you have not stated here all that is entered in your log-book, have you?

Ans. I have stated all except about transactions on board the light-boat, hoisting lights, and the like.

12th Cross-int. How long was it from the time you first saw the Island City to the time you saw her at Hyannis?

Ans. I should think about five days. It might have been four. I should think four or five days.

13th Cross-int. Did you see the Kensington during all this time? if so, when and where, and what did she appear to be doing?

Ans. I don't know whether I did. I saw a small schooner come out of Hyannis and go towards her, but at night she hadn't got to her. That isn't down in the log-book; we only put down there the vessels passing the light-boat; we saw no more of the schooner after nightfall. The next morning, when we saw the bark again, we supposed the schooner had been to her, because she was so much nearer, but we didn't know.

14th Cross-int. Were there many vessels passing where you were anchored between the 23d and 30th of January, and how many, if any?

Ans. I don't recollect but two or three; there may have been five or six. It was all clogged up with ice.

15th Cross-int. In your seventh direct answer you say that the second time you saw the Island City it was the next day, and after a blow; was that blow severe, and how was it, according to your recollection?

Ans. It was a very severe blow from the northward, with snow.

16th Cross-int. How many times did you see her at anchor before she arrived at Hyannis?

Ans. Twice.

Cross-interrogatories on behalf of the owners and crew of the Westernport.

17th Cross-int. How near to the point "C" were you on Monday, Tuesday, Wednesday, Thursday, or Friday of that week?

Ans. Not within twenty miles of it.

18th Cross-int. How far from the point "C" does your boat lie when she is at her station?

Ans. About twenty miles from it, I think.

19th Cross-int. Where was your boat on Friday and Friday night?

Ans. In Cotuit harbor.

20th Cross-int. Where were you yourself on that night?

Ans. Aboard the light-boat.

21st Cross-int. Can you state what entries you made in your log as to the weather on Friday night, January 30th?

Ans. I entered in the log that the first part of the night the wind was northeast, and cloudy; middle and latter part, cloudy, and a leading breeze from the eastward.

22d Cross-int. How had the wind been during Tuesday, Wednesday, and Thursday previous?

Ans. Tuesday, I think, northeast, and Wednesday and Thursday too, I think. The wind was to the eastward a great deal of the time that week.

23d Cross-int. What entries did you make in your log-book as to wind, weather, and ice, during Tuesday, Wednesday, and Thursday?

Ans. I can't recollect particularly about it, I entered it down as it was.

24th Cross-int. When did you go into Cotuit Harbor?

Ans. Thursday noon.

25th Cross-int. Why did you not go back to your station instead of going into the harbor?

Ans. Because we had no anchor nor chain fit to go there, having broken our anchor.

26th Cross-int. Did you ever anchor at the point "C"?

Ans. I never did.

27th Cross-int. How were the weather, sea, and ice, on Tuesday, Jan. 27th, as compared with Thursday, Jan. 29th.

Ans. The ice was harder; the weather, I think, was about the same; I am not sure; it is noted in the log. There was no sea while we lay in the ice; that made it smooth.

28th Cross-int. Did not the ice go out of the Sound on Friday night, the 30th of January?

Ans. I don't know.

29th Cross-int. Did you make any entries in your log-book as to the distance and direction of the Island City, or any other vessel referred to at different times, or were your entries confined to the wind and weather, and the events on board your boat?

Ans. I think I made no entries as to the distance or direction of the Island City. The entries are confined to the wind and weather, and transactions on board.

Further Interrogatories on behalf of Joseph H. Adams, President, &c.

1st Interrogatory. You have stated in your cross-examination that your regular station is about twenty miles distant from point "C" on the chart, and that you were not within twenty miles of that point during the week referred to. Do you mean to be understood that in drifting toward the Bishop and Clerks you may not have been carried within twenty miles of said point?

Ans. I do.

2d Int. When you say that you have stated in your deposition all that relates to your dragging, to the bark, &c., do you mean to swear positively that the log-book contains nothing more than you have

stated on these subjects, or that you have stated all that you remember?

Ans. That I have stated all I remember.

JAMES CROWELL.

Deposition of Alexander D. Bunker, taken on behalf of Joseph H. Adams, President, &c., October 13th, 1857.

1st Interrogatory. State your name, age, residence, and occupation.

Answer. My name is Alexander D. Bunker; age, sixty-six; residence, Nantucket; occupation, keeper of the Sankaty Head Light.

2d Int. Have you ever been at sea? If so, how long, and in what capacity?

Ans. I followed the sea thirty-three years; the greater part of the time as master.

3d Int. Were you at Sankaty Head during the month of January last?

Ans. I was.

4th Int. Do you keep a daily record of the wind and weather at said light house?

Ans. I do.

5th Int. Will you produce the same, and state from it how the wind and weather were from the 21st to the 31st of January last, inclusive?

Ans. I will; January 21st, the wind variable, snow and rain in the fore part of the twenty-four hours—middle part, S. W., and cloudy—latter part, S. W. and N. E. and snow; wind moderate from one to two. January 22d, fore part, wind N. E. with snow—middle part, N. N. E. and snow, strength seven—latter part, N. W., clear, eight strong. January 23d, fore part, N. W. and clear, seven—middle part, clear, N. W., seven—latter part, W. N. W., clear, six. January 24th, fore part, N. N. W., clear, three—middle part, E., snow, two—latter part, E. S. E., snow, two. January 25th, fore part, N. W., clear, four—middle part, N. W., clear, four—latter part, W. N. W., clear, five. January 26th, N. W., clear, three—N. W., clear, three—S. W., cloudy, four. January 27th, S. W., cloudy, three—S. W., cloudy, three—S. W., rain, four. January 28th, W. S. W., rain, three—N. N. E., rain, three—N. E., rain, four. January 29th, N. E., fog and rain, four—N. E., fog, four—N. N. E., rain and snow, five. January 30th, N. E., clear, five—N. E., clear, five—N. E., clear, six. January 31st, E. S. E., rain, six—E. S. E., rain, seven—S. E., fog and rain, six. In noting the force, I divide between 0 and 13; 0 being a calm, and 13 a hurricane; that is the scale for estimating the force of the wind.

6th Int. Did you see the bark Island City during any part of January last? If so, where was she?

Ans. I saw her in January, on the 26th, through my glass; I thought at first that it was the Cross Rip light-boat, from its having

no mast. I am not sure now that it was not the light-boat; because although I afterwards thought it was this bark, I think, from what I have heard, that she must have been too far off for me to see her; but on the same day, in the afternoon, the bark was at anchor I know, N. by E. half E. from our light-house.

7th Int. Where did the bark Island City lie from you in the afternoon, when you saw her at anchor?

Ans. In the ship channel; N. by E. half E., from the light. I supposed her to be on the south side of the channel. She was between six and seven miles from the light.

8th Int. Did you see her each day from this time until Friday, January 30th?

Ans. Every day, I believe.

9th Int. What was her condition, as to ice, while off Great Point from Monday to Friday; and did she change her position during that time?

Ans. As near as I recollect, she was in the ice all day on the 26th; after that I don't think she was confined by the ice all the time. I could not discover that she changed her position during that time.

10th Int. Was she, during any of that time, free from ice? If so, what part of the time?

Ans. She was, part of the time. I should say she was clear of the ice three days out of four—the last three days; I'm not sure that she was clear more than two of the days; I don't remember positively.

11th Int. Was there or not less ice about her the latter part of said time than the former?

Ans. Altogether less. I feel certain that she was not in the ice the last two days.

12th Int. If said bark would have been in danger of dragging, or being carried adrift, during any part of said time, taking the wind, weather, and ice, as you have stated, would such danger have been greater during the former or the latter part of said time?

Ans. The danger was on the first day only; and, before that day was over, the danger was past; for the ice was broken up, and went by her, and she held her place.

13th Int. Was there any wind on Friday night, the 30th, or in the forenoon of the 31st, which could have set that bark adrift had she remained exposed to it?

Ans. There was not.

14th Int. In your opinion, what wind would be required to have carried her adrift from the place where she lay on Friday, the 30th?

Ans. I can only say that a vessel with two hundred fathoms of chain out, and an eight hundred pound anchor at the end, in a muddy bottom, and having been drifted about so as to get the chain snaked round in the bottom, would require a very considerable gale to start

her, especially with no masts up. This is only opinion; but it is based upon experience which I have had.

15th Int. Supposing said bark to have remained at anchor, in her then condition, where you saw her, with an eight hundred pound anchor and one hundred to one hundred and ten fathoms chain, from Monday to Friday, was there any wind or sea on any part of Friday, Friday night, or Saturday morning, sufficient to have started her from said anchorage?

Ans. None, in my opinion, unless when I was asleep; and I was up half the night.

16th Int. How was the sea on Friday and Friday night, the 30th, and how much surf was there on your shore?

Ans. I didn't remark particularly; I only judge from the wind. On Friday night—the night she was taken away—there was a gradually increasing wind from N. E. to E., and we expected a gale, but the force of the wind proved to be only about seven. (The witness here looked at his record, and said), "the force of the wind is here noted as six, and I don't undertake to be sure except by my book." "I couldn't say about the surf, because the shore was ice-bound, and I could see no surf. About the coming on of a blow the wind will vary from E. N. E. to E. S. E., and back again, during one watch."

17th Int. Will you describe the shore off Siasconset, its height, &c.?

Ans. I think the rise of the beach from the water is about eight feet; then the bank is eighteen or twenty feet high. I mean by Siasconset village, at the light; the top of the bank is ninety-five feet from the surface of the sea, at the highest point.

18th Int. How high does the surf usually rise there?

Ans. Up to the foot of the bark sometimes; the surf rises some four or five feet from the level of the sea, and rolls up to the foot of the bank.

19th Int. How high above the level of the sea would this be; and what is the distance inland, on the sloping beach which the surf would roll?

Ans. The surf may sometimes break six feet high from the level of the sea. It rolls up to the foot of the bank, which may be fifty feet from the edge of the water.

20th Int. Was there any higher surf during the time the bark laid off Great Point, or at any other time from the 26th to the end of January, than that you have just described?

Ans. There was almost none at all during that time; it would sometimes raise the ice a little on the shore, but it settled right down again.

Cross-interrogatories propounded on behalf of the Westernport.

1st Cross-interrogatory. Did you see the bark at any time during this time when the ice was in contact with her? if so, when?

Ans. I did on the afternoon she anchored. I didn't see her anchor; I was below then.

2d Cross-int. Did not the ice which was inside of Nantucket go out on Friday night, the 30th of January?

Ans. A large part of it did go out before that; most of it had gone two days before; it was along the north shore then. There are those who know better than I when it went out of Nantucket harbor.

3d Cross-int. Did or not the ice, or a large part of it, inside Nantucket, and about Nantucket harbor, go out on Friday night?

Ans. There might have been a good deal to go out of Nantucket bay that night; but a great deal had gone out before. I can't say much about the bay; I was observing outside.

4th Cross-int. How far was the bark from you, or from your shore?

Ans. I think she was about four or five miles from Great Point, and about six or seven miles from me.

5th Cross-int. Had not the ice gone from the shore on Friday, near where you were?

Ans. I don't recollect exactly; but I think it had.

6th Cross-int. Did you see the steamboat as she took away the bark?

Ans. I didn't see her go; but I was expecting her to go every minute, when it grew dark.

7th Cross-int. Please describe what you saw on the day that the steamboat took away the bark, and the state of the weather.

Ans. It was a fine day; three steamboats came down the Sound together; when they got along down one of them went to the bark, and lay alongside of her; the other two went off to the eastward. That one lay alongside, getting up steam, until night set in.

8th Cross-int. Did you not think the steamboat and bark in a dangerous condition on Friday night, with the indications as to the weather that there were?

Ans. I should have calculated that if we had had a heavy northeaster she would have gone adrift; but it would have taken considerable of a gale to start her, with all that chain out, which they tell about.

9th Cross-Int. What is the strongest wind that you have known, since you have been keeper of the Light?

Ans. The heaviest winds were on the night of January 5th, 1856, and January 18th, 1857. The force of the wind then was about ten, according to our scale.

10th Cross-int. How was the weather during the time that the bark lay at this point?

Ans. It was good—pretty good for the month of January—all the time she lay there. I thought her safe there after the ice left her; I thought she would lie there until somebody came for her, unless a heavy storm came on.

11th Cross-int. (Objected to.) Do you think that the captain of the Forbes ought to have left the bark as he did? If not, why not?

Ans. I couldn't tell what his condition was as to coal or provisions; but I thought he did wrong to leave her with nobody on board, because if she had gone down the Sound, he could have gone down and found her. I shouldn't have left her myself.

Cross-interrogatories on behalf of John Norris and als., and Answers thereto.

12th Cross-int. You say the heaviest wind you ever knew, as keeper at Sankaty, was TEN according to your record; would not EIGHT be a very heavy gale?

Ans. EIGHT would be an ordinary gale, such as we have from northeast. TEN would be a distressing gale of wind. EIGHT is what we call a grown gale.

13th Cross-int. With the wind N. N. E., strength seven, January 22, how would the sea be on the northeast side of the Horse Shoe, in your opinion?

Ans. There would be a tolerable sharp sea while it was against the tide; with the tide it wouldn't be very much of a sea. With the wind from six to seven, I have gone after whales in my boat.

ALEXANDER D. BUNKER.

Deposition of Manuel Enos, taken on behalf of Joseph H. Adams, President, &c., before Wm. S. Dexter, Commissioner, Oct. 14, 1857.

1st Interrogatory. State your name, age, residence and occupation.

Answer. My name is Manuel Enos; age, fifty-three; residence, Nantucket; occupation, mariner.

2d Int. How long have you followed the sea, and in what capacity?

Ans. I have followed the seas thirty-seven years—as sailor and master.

3d Int. Are you a pilot? If so, how long have you been such?

Ans. I am a pilot—have had a commission about twelve years.

4th Int. Were you at Nantucket in January last?

Ans. I was.

5th Int. Did you see the bark Island City during any of that month?

Ans. I did. I saw her anchored in the Sound. I saw her off Great Point, in tow of the Forbes.

6th Int. On what day of the month did you see her in tow of the Forbes—and did you see her at anchor on that day?

Ans. Monday, Jan. 26, I saw her when the Forbes left her. When I first saw the Forbes I couldn't see the bark, because the land cut her off.

7th Int. Did you see her every day while she lay at the place where the Forbes left her?

Ans. I did.

8th Int. From where did you see her?

Ans. I saw her from the south tower of Nantucket.

9th Int. How was the ice around her during that time?

Ans. The ice appeared to be pretty thick all the time but the last two days.

10th Int. How was the ice in the Sound on the day the Forbes anchored the bark, and the day before?

Ans. There was a good deal of ice in the Sound. I suppose there was a passage through for a steamer, but I shouldn't have thought it safe for a sailing vessel to attempt.

11th Int. Was this heavy ice; and did it, to your knowledge, carry any vessels adrift?

Ans. It had every appearance of being pretty heavy. I know it carried the light-boats anchored in the Sound, adrift. There were no other vessels anchored there then that I know of.

12th Int. Would it, in your opinion, have been dangerous to other vessels, if anchored in the Sound at that time; and why?

Ans. I think it would—because the ice was very thick, and would carry them wherever wind and tide might set, and they couldn't do anything with their sails.

13th Int. If this bark, dismasted, had been lying at or near the point "A" on the chart, with an 800 lb. anchor and 110 fathoms of chain out, on Sunday and Monday, Jan. 25th and 26th, would she, in your opinion, have been safe? If not, why not?

Ans. In my opinion, she would not have been so safe as where she was; on account of the tide, which is less where she was, because the tides meet there and wouldn't have so much force on the ice.

14th Int. Did you see the bark on the day she was taken away from the place where the Forbes left her?

Ans. I did.

15th Int. How was the sea, around her and on the shore, that day?

Ans. It was very smooth that day.

16th Int. Where were you at the time?

Ans. I was on the beach on the east side of the Island.

17th Int. Did the bark roll badly, or ride easy?

Ans. She rode very easy. She did roll a little but did not roll much. She lay very nice, I should say.

18th Int. Did she roll so as to make it difficult or dangerous to run alongside or astern in a boat, and board her?

Ans. I should say not at all—not the least danger.

19th Int. Was there or not a bad sea, the night after the bark was taken away, or the next morning?

Ans. I didn't have the run of the sea in that place next day. I don't know how much there was. Up to nine o'clock the night she was taken away, it was a very pleasant evening.

20th Int. Who was with you on the beach that day?

Ans. Mr. Patterson who has testified here, Calvert Handy, Davis Hall, George Coffin, and Asa Meigs.

21st Int. Where did you go from? Did you go of your own accord, or were you sent—and by whom?

Ans. From the town. We went of our own accord.

22d Int. Was there any other boat's crew from town on the beach that day?

Ans. None that I saw or knew of.

23d Int. If there had been, should you have seen them?

Ans. I think the prospect would be very good of my seeing them, because they must have been on the beach in front of where we were.

24th Int. Could there have been another boat's crew on the beach that day without your knowing it?

Ans. There could have been, out towards Great Point or Siasconset—out of sight from where I was.

Cross-interrogatories on behalf of officers, owners, and crew of the Westernport.

1st Cross-interrogatory. How long have you lived on Nantucket, and where did you live before?

Answer. Ever since 1821—before that I lived at the Western Islands.

2d Cross-int. Did you go to the beach and return with Mr. Patterson?

Ans. I did.

3d Cross-int. Did you see the bark after you left the beach; if so, when?

Ans. No—not that I remember.

4th Cross-int. You went directly back to the town, did you not?

Ans. Yes.

5th Cross-int. How far was the bark from the shore, when she lay at the point "C"?

Ans. I should think not outside five miles—it might not be four and a half.

6th Cross-int. Did you, or any of your company, go to the light-boat?

Ans. Not that I know of.

7th Cross-int. Did you, or any of your company, go to the shore to assist or look after the bark on Friday? If so, who?

Ans. Joe Patterson and I stated on Monday—we went about half way to her—that was the day I first saw her with the steamer—that was the only other time.

8th Cross-int. Did you intend to go on board the bark when you left town on Friday?

Ans. Yes.

9th Cross-int. Why did you not go on board?

Ans. Because there was ice from the shore. Besides that, when

we got there, we saw the steamer with her, so it was no use for us to go. That was the reason we never went to the boat house.

10th Cross-int. You would have tried to get on board, would you not, if the steamer had not been there?

Ans. Yes.

11th Cross-int. Did you wish to get on board the bark for the purpose of saving her?

Ans. When we started from town, it was from curiosity. We saw a bark there, and the ice clear from her, and we meant to go aboard and find out all about it.

12th Cross-int. Did you not hope that you might be able to do something to save the bark, if you could get on board?

Ans. Yes. I think that was the intention. I think it was very proper that we should hope so.

13th Cross-int. Have you ever been master of any ships? If so, when, how long, and what ships?

Ans. Not of any ships; I have been master of coasters.

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MANUEL × ENOS.
mark.

Attest: W. S. DEXTER.

Deposition of Joseph D. Patterson, taken on behalf of Joseph H. Adams, President, &c., before William S. Dexter, Commissioner, Oct. 13, 1857.

1st Int. State your name, age, residence, and occupation, and how long you have followed the same.

Ans. My name is Joseph D. Patterson; age, forty-three; residence, Nantucket; occupation, mariner. I have followed the sea twenty-five years.

2d Int. In what capacities, and where have you been employed.

Ans. I have been fishing—smacking—five years, out of Nantucket. Since that I have been boating and piloting along shore.

3d Int. Are you, or not, a pilot? If yea, how long have you been so?

Ans. I am a pilot, and have been so twelve years from Nantucket.

4th Int. Are you familiar with the localities in the Vineyard Sound, and off the shore of Nantucket?

Ans. I am, all around Nantucket?

5th Int. Were you on the island of Nantucket, in January last; and if so, did you see the bark Island City during any part of that time? When and where?

Ans. I was then on the island. The first time I saw the Island City was in the sound, off the S. E. part of the Horse Shoe, with a flag flying, and her masts gone. I don't recollect the day of the month. She laid there two days. I saw her again at anchor, under Great Point on Monday morning. The Forbes had her then.

6th Int. How long did she lie there?

Ans. We started to go to her from Nantucket. When we got about half way, we saw that she was under way. She went out there and anchored; and laid there from Monday until Friday afternoon.

7th Int. Did you see her every day during that time?

Ans. I did.

8th Int. How were the wind, weather, and sea, during each of those days?

Ans. The wind from northward or N. W. every day. There was some ice round her until Wednesday; that day the ice begun to clear, and Friday there was no ice except around the shore, more than two miles from her. Friday the wind was E. N. E., moderate breeze.

9th Int. Where were you on that day?

Ans. I was at the head of the harbor, within four miles of her.

10th Int. Had you any one with you?

Ans. Yes, there were six of us.

11th Int. Were you sent by any one?

Ans. No.

12th Int. Was there any boat's crew at the head of the harbor, or near there, on that day, other than the men with you?

Ans. There was nobody within three miles of us.

13th Int. Could you see the bark distinctly from where you were?

Ans. Yes.

14th Int. How was the sea on that day, Jan. 30th?

Ans. It was pretty smooth. A boat could have gone off easily, if there had been no ice in the way. There was no sea to hinder a boat.

15th Int. Where was the ice of which you speak?

Ans. Along the shore, in cakes.

16th Int. How far did it extend from the shore?

Ans. About 200 yards.

17th Int. Would there have been any difficulty or danger on account of the sea, in boarding that bark where she lay?

Ans. No.

18th Int. Did you see any steamboat come to said bark on that day?

Ans. I did. She came while we were up there.

19th Int. How was the sea at that time?

Ans. It was very smooth on the back side. There was a little roll where the bark was. We could see her roll some.

20th Int. Whether or not was there any wind or sea at the time the steamer came, or afterward during that evening or the next day, to have endangered the bark, if she had been exposed to it?

Ans. Not from 12 o'clock Friday until 12 o'clock Saturday. After

12 on Saturday the wind rose, and blew pretty heavy on Saturday night.

21st Int. If said bark would have been at all in danger while she laid there, would such danger have been greater during the early or the latter part of the time?

Ans. The most danger was from the ice in the first part of the time.

22d Int. When was the weather coldest, and the ice heaviest in the Vineyard Sound?

Ans. The coldest weather was at the time she cut away her masts. The ice was heaviest then.

23d Int. How was the cold on Friday, before the bark reached Great Point?

Ans. It was pretty cold.

24th Int. When did the principal body of ice move out of the Vineyard Sound?

Ans. It was pretty well gone by Friday, the day the bark went away. On Saturday afternoon it blew pretty fresh from the eastward, and Sunday morning the ice was pretty much all gone, except from our harbor, where it couldn't get out with the wind in that quarter.

25th Int. When was it going out in the greater quantities?

Ans. On Monday and Tuesday it went out of the Sound the most.

26th Int. Whether or not was the ice so heavy as to endanger vessels moored in the Sound?

Ans. I presume it was, if it went fast enough.

27th Int. Did you know of any vessels being adrift in the Sound during that week?

Ans. I did not see any except the light boat.

28th Int. (Objected to.) Taking the wind, weather, and ice, as they were during Sunday, Monday, and Tuesday of that week, would a vessel—in your opinion—have been safer at the point on the Chart marked "A," or at the point "C," with the same moorings?

Ans. I should think her safer at the point "C," because at "A" there is about a 2½ knot tide, and at "C," there is about a knot tide.

29th Int. How is the anchorage at point "C," as to security from ice and tides, and as to holding ground?

Ans. It is good holding ground, close sand bottom. The place where she lay, at "C," is between two tides, and behind Point Rip.

30th Int. How is it as to depth of water, as compared with places on each side of it?

Ans. To the southward and eastward of where she lay there is 15 fathoms, but she couldn't go three miles in any other direction without shoaling her water.

31st. Int. What effect would the running from deeper to shoaler water have on the anchorage?

Ans. None, except that her anchor would drag a little harder up hill than it would down. I don't know of any other effect.

32d Int. Were you at Siasconset while the steamer New York was coaling?

Ans. I was there on Sunday while she was there; the Sunday before the bark came down.

33d. Int. How was the sea on the east shore of Nantucket, on the day the bark was taken away, as compared with the sea at that time?

Ans. It was very smooth. It was smoother than it was that Sunday.

Cross-Interrogatories propounded on behalf of Owners and Crew of Westernport, and Answers.

1st Cross-int. Please point out on the chart the place where the bark was when you saw her.

Ans. We were at the place marked "M."

2d Cross-int. When did you go there, who went with you, and for what purpose did you go?

Ans. On Friday. We got there about noon; Samuel Enos, Asa Meigs, Davis Hall, Calvert Hardy, and George Coffin went with me. We started from home intending to go to the ship.

3d Cross-int. How far is it from your home to this place, and how did you expect to reach the bark?

Ans. About seven miles. We expected to go out in a boat.

4th Cross-int. How did you go, and did you take a boat with you? If not, whose boat did you expect to use?

Ans. I got liberty to take the life boat at the head of the harbor. We walked on the ice.

5th Cross-int. From whom did you get liberty to take that boat?

Ans. From Philip M. Folger.

6th Cross-int. For what purpose did you intend to get on board the bark?

Ans. We saw the bark. I thought there was nobody aboard. We concluded to go and see what she was.

7th Cross-int. Do you say that you were going on board only from curiosity?

Ans. No. I didn't say so. I say we were going to see who she was, and what she was.

8th Cross-int. Do you say that you were going on board only to see who and what she was?

Ans. I said that was what we were going for.

9th Cross-int. Did you have no other purpose or intention in attempting to go on board?

Ans. We didn't know what we should do when we got aboard. We meant to go and see what she was and how she lay.

10th Cross-int. If you could have done anything to have saved the bark after you got on board, did you intend to do it?

Ans. I can't tell what I should have done after I got aboard.

11th Cross-int. Do you say that you should, or should not, have tried to save the bark if you got on board? Did you not leave home for the purpose of trying to save the bark?

Ans. I can't tell anything about what I should have done after I got aboard.

12th Cross-int. Can you tell what your purpose or intention was in trying to board the bark; if so, what was that purpose or intention?

Ans. Our intention was to get aboard the bark if there was nobody on board. What we should have done with her, I can't say.

13th Cross-int. Did you intend to try to save the bark if you were able, after getting on board?

Ans. If we had got aboard, and she had had sails so that we could have managed her, or there had been any other way to save her, of course we should have tried to save her.

14th Cross-int. If you could have done anything to have saved her, in the condition in which she was, should you not have done it?

Ans. Yes.

15th Cross-int. Who first proposed to you to go to the bark?

Ans. I first proposed it.

16th Cross-int. At what time did you leave for home?

Ans. About half-past one, as near as I recollect.

17th Cross-int. Did you find the life boat where you went?

Ans. I didn't go to her. We found the ice was there, and it was no use. She was in a house, and we didn't go within half a mile of it.

18th Cross-int. When you say that you are a pilot, do you mean that you are a pilot in Nantucket harbor? What license as a pilot do you hold?

Ans. I mean that I am a pilot in the harbor and all about Nantucket shoals. I hold a commission for Nantucket harbor. I think there are no commissions for outside Nantucket.

19th Cross-int. Do you think the bark would have been in danger if she had remained where she was until Saturday night? If so, state what that danger would have been.

Ans. I don't think she would have started. There was a pretty fresh breeze coming up at about six o'clock, but at twelve it hadn't come on to blow hard, and I don't think it would have started her.

20th Cross-int. What is there to protect a vessel at the point "C" from the full force of a northeast, east, or southeast wind?

Ans. With the wind N. E., she would have the Great Round Shoal to protect her a good deal. With the wind east it would blow pretty straight up the ship channel between that shoal and Bass Rip; but the reisn't much water there, not over five fathom, and it wouldn't heave in strong. The wind S. E. would blow pretty nearly from Bass Rip, which would break the sea. That wind would come from the shoals between Bass Rip and Fishing Rip.

21st Cross-int. State the depth of water on each of these shoals, and then explain how they would break the force of the *wind.*

Ans. There is eight feet on Bass Rip; where I should go with a ship off the north end of it, there is three and a half fathom. Shoal water makes it smooth under the lee of the shoals. I mean to say that shoals break the force of the *sea*, not of the *wind.*

22d Cross-int. When you were at the beach, how far out from the shore did the ice extend, and how near to the open water did you go?

Ans. It extended about 200 yards. I went down to the edge of the beach.

23d Cross-int. Did not the ice break the force of the sea on the shore?

Ans. Not much that day, because there was no sea except a little chop. There was no swell. What sea there was—the chop—kept the ice bobbing up and down, clear to the shore.

24th Cross-int. Could you not have got the life-boat over or through the ice, so as to have reached the open water?

Ans. We didn't like to try, for fear of staving her.

25th Cross-int. Is that the reason you did not make the attempt?

Ans. That was the reason. We might have gone, if hadn't been for fear of staving the boat.

26th Cross-int. Could you see the bark from the place where you were at the beach?

Ans. Yes.

27th Cross-int. When you were at the beach on Sunday, how far out did the ice extend, at the place where you were?

Ans. The ice extended as far as you could see. That was the Sunday the bark came down.

JOSEPH D. PATTERSON.

The following deposition was filed in this cause, but was not admitted in evidence by the court, the libellants having objected thereto:—

Circuit Court of the United States, District of Massachusetts.

H. B. Cromwell and als., libellants, *vs.* Bark Island City and Cargo.

John Norris and als., libellants, *vs.* same.

Joseph H. Adams, President, &c., *vs.* same.

Owners of Schooner Kensington, Petitioners, *vs.* same.

Thomas W. Peirce and als., Claimants.

Be it remembered, that on the thirteenth day of October, in the year of our Lord eighteen hundred and fifty-eight, at Boston, in said district of Massachusetts, before me, William S. Dexter, a Commissioner in and for the district of Massachusetts, to take affidavits and bail in civil causes depending in the courts of the United States, appointed by the Circuit Court of the United States for the First Cir-

cuit under the acts of Congress in such case made and provided, personally appeared John R. Rowe, of said Boston, a witness for the said Joseph H. Adams, President, &c., in certain civil suits depending in the Circuit Court of the United States, in and for the First Circuit and District of Massachusetts, as aforesaid; and the said Rowe, being by me first carefully examined and cautioned, and sword to testify the *whole* truth relative to the issue, did depose and say in answer to interrogatories proposed by J. D. Bryant, Esq., Proctor for the said Joseph H. Adams, President, &c., as follows, viz:—

Deposition of John R. Rowe.

1st Interrogatory. State your name, age, residence, and occupation, and where you were employed in January, 1857.

Ans. My name is John R. Rowe; age, twenty-one, last July; residence, Boston; occupation, telegraph operator; I was employed as operator, at Wood's Hole, until January 20, 1857; after that date until April 1st, 1857, I was in the same employment, at Tarpaulin Cove, Naushon Island, in the employ of the Cape Cod Telegraph Company, whose line runs from Boston to Provincetown and Tarpaulin Cove, and intermediate stations.

2d Int. State whether or not there were any steamboats at Tarpaulin Cove, while you were there in January, 1857; and if any, what they were.

Ans. There were three: the Totten, a propeller; the H. B. Beach, a propeller; and the Westernport, a propeller, running between Boston and New York.

3d Int. State whether or not any telegraphic despatches were received by you at Tarpaulin Cove, during that time, in regard to the bark Island City; if any, what were they?

Ans. There were several such despatches received. I received a message from Hyannis, that the R. B. Forbes had made fast to the Island City, among the ice in the Sound. This was the first one about the Island City, that I remember. I received another, that the Forbes, with the Island City in tow, were drifting in the ice in the Sound. I received another from Provincetown, that the Forbes was in Provincetown, taking in coal, and would leave immediately to return to the bark Island City, which was off Great Point. I also received another message from Provincetown, that the Forbes had started for the bark. I received another from Provincetown, that the Forbes had returned there, and was waiting for coal from Boston, on the arrival of which she would start again for the bark. There were other messages of a public nature, which did not relate to the bark, and others of a private nature.

4th Int. State as nearly as you can the time when these messages were received by you.

Ans. They were all received between the twenty-third and thirty-first of January, 1857. I cannot give the exact dates.

5th Int. Was the message last mentioned by you received before or after the steamer Westernport sailed from Tarpaulin Cove?

Ans. The day before. She sailed the next morning.

6th Int. Were the messages you have mentioned, of a public or private nature? And were any of them communicated by you to any person or persons? If so, to whom?

Ans. They were all of a public nature. They were communicated by me to many persons. They were all communicated by me to Captain Berry, of the Westernport, also to the engineer of that steamer, also to Captain Scudder, of the H. P. Beach. All that was known by me about the bark was communicated freely to anybody, about there, whom I met. I was questioned about this bark, I remember, by the engineer of the Westernport, the evening before that steamer left. He inquired particularly about her, and about the Forbes, and where they both were.

JOHN R. ROWE.

MEMORANDUM.—The hour fixed for the taking of the foregoing deposition having arrived, I caused inquiry to be made of Richard H. Dana, Jr., Esq., whether he or Daniel W. Gooch, Esq., proposed to attend the taking thereof. I was informed that Mr. Dana objected that the deposition could not be taken, the evidence being published, and hearing assigned. And also, that he was engaged in the District Court of U. S., at ten o'clock. I therefore postponed the taking of said deposition, until half past two o'clock in the afternoon of the same day, and caused Mr. Dana to be thereof informed. And at said last mentioned hour I proceeded to take said deposition, but neither Mr. Dana nor Mr. Gooch attended.

WILLIAM S. DEXTER, Commissioner.

United States of America, District of Massachusetts.

I, William S. Dexter, a Commissioner in and for the District of Massachusetts, appointed by the Circuit Court of the United States for the First Circuit under the Act of Congress, authorizing the appointment of commissioners "for the more convenient taking of affidavits and bail, to be used in civil causes depending in the Courts of the United States," and the acts additional thereto, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the said John R. Rowe is a material and necessary witness in the cause in the caption of the said deposition named, and that said causes are pending in Admiralty in said court.

I further certify that a notification hereto annexed, signed by me, the commissioner aforesaid, before whom the said deposition was taken, to all the adverse parties in said causes to be present at the taking of the same, and to put interrogatories if they saw fit, was first made and served on Daniel W. Gooch, Esq., proctor for said H. B. Cromwell & als. (H. A. Scudder, Esq., proctor for said John Norris & als.; Hutchins & Wheeler, Esqs., proctors for said peti-

tioners, and William Dehon, Esq., proctor for said claimants, having waived notice), he being the nearest and within one hundred miles of the place of caption, allowing time for his attendance after being notified, not less than at the rate of one day, Sundays exclusive, for every twenty miles travel, and none of them did attend the taking thereof.

I further certify that on the thirteenth day of October, in the year eighteen hundred and fifty-eight, I was attended by John R. Rowe, the said witness, who was of sound mind and lawful age, and the said witness having been by me carefully examined, and cautioned and sworn to testify the whole truth in the cause aforesaid, did answer to the interrogatories put to him, and the testimony given by him was by me reduced to writing in the presence of the witness, and that he subscribed the same as and for his deposition, in my presence, and that I have retained the said deposition in my possession for the purpose of forwarding it under my own hand to the court for which it was taken, with this certificate of the reason of its being taken.

I further certify that I am not of counsel or attorney to either of the parties in the cause in and for which the said deposition was taken, nor in any way interested in the event of said cause.

In testimony whereof, I have hereunto set my hand and seal, this thirteenth day of October, in the year of our Lord eighteen hundred and fifty-eight.

[SEAL.] WM. S. DEXTER,
Commissioner of the Circuit Court of U. S. Mass. District.

Deponent's fees, $1.50.
Commissioner's fees, $10.00.

United States of America, Massachusetts District, ss.

To H. B. Cromwell and als., Libellants, *vs.* the Bark Island City and Cargo, or to D. W. Gooch, Esq., their Proctor in said cause.

Whereas, Joseph H. Adams, President, Libellant, *vs.* said Bark and cargo, has requested me to take the deposition of John R. Rowe, of Boston, in said District, to be used in said cause now pending in the Circuit Court of the United States for the First Circuit and District aforesaid; and the office of J. D. Bryant, Esq., No. 28 State Street, in said Boston, and the thirteenth day of October in the year of our Lord one thousand eight hundred and fifty-eight, at nine of the clock in the forenoon, are appointed the time and place for said deponent to testify what he knows relating to said action, you are hereby notified that you may then and there be present and put such interrogatories as you may think fit.

Given under my hand and seal, at Boston aforesaid, on the eleventh day of October, in the year of our Lord one thousand eight hundred and fifty eight.

[SEAL.] WM. S. DEXTER,
Commissioner of said Court to take Bail, Affidavits, &c.

United States of America, Massachusetts District.

Boston, October 11, 1858.

Pursuant hereunto, I this day notified the within named H. B. Cromwell and als. by giving in hand to Daniel W. Gooch, their Proctor within named, a true and attested copy hereof.

W. FREEMAN, Jr., Duputy U. S. Marshall.

Service,	$2.00
Copy,	1.00
Travel,	.06
	$3.06

Circuit Court of the United States, Massachusetts District.

In Admiralty.

Depositions in behalf of claimants, used in each of the following cases:—

John Norris et als., libellants, *vs.* Bark Island City and Cargo.
Owners and Crew of Steamer Westernport *vs.* same.
Joseph H. Adams, President, &c., *vs.* same.
Owners of Sch. Kensington, Petitioners, *vs.* same.
Thomas W. Peirce & als., Claimants.

Deposition of Asa Stevens, examined on behalf of the Claimants, March 16, 1857.

1st Interrogatory. Were you master of the bark Island City on her late voyage from Galveston to Boston? If yea, when did you leave Galveston?

Answer. I was. We left Galveston about the 9th or 10th of December last.

2d Int. Did you meet with any, and what disaster, on said voyage? If yea, describe what happened, and state when it happened.

Ans. On the 8th of January, I sprung my bowsprit at sea; on the 18th January, we made Cape Cod, in a snow storm; finding that I could not get by, I kept away and ran into the Vineyard Sound. I anchored within six miles of Bass River, about four o'clock that afternoon. At ten P. M. struck adrift, and finding no other alternative, cut away the masts, which occupied us from then until after five next morning. We then brought up and lay still. At that time we supposed that we had one anchor; the other we felt confident was gone. When daylight came, we found ourselves near the Horse Shoe, a large shoal four or five miles in extent, at the place marked by me "X" on the chart now shown to me. The place where I first anchored is marked by me "O" on said chart. [The chart referred to by the witness is by me marked "C. WSD." for identification.—W. S. Dexter.] The buoy on the southeast part of the Horse Shoe bore south by west half to three-quarters of a mile

distant from the point "X." This was on Monday morning, and we lay there until the next Wednesday evening, supposing ourselves to be at anchor all the time. At seven o'clock Wednesday evening, the schooner Kensington came to us, January 1st.

3d Int. Whether or not were you drifting from the point marked "O," to the point marked "X," during the gale in which you cut away your masts?

Ans. Yes; we were.

4th Int. How long did that gale continue?

Ans. Until about six o'clock on the morning of Monday, Jan. 19th; it then began to moderate.

5th Int. Did you drift at all while you laid at the point marked "X"?

Ans. None that I perceived; I think none at all.

6th Int. How were the wind and weather while you laid there?

Ans. The wind was northeast when I first got there; it hauled to the north during the day; the next day, January 20th, the wind was west; on the 21st it was southwest and moderate; the weather was clear, for the most part.

7th Int. If you had drifted, whether or not would you have been likely to have gone on to the Horse Shoe Shoals or elsewhere?

Ans. We could not drift on to the Horse Shoe with any wind but an east wind.

8th Int. How were the wind and weather at the time the Kensington came to you, and on the day after?

Ans. At the time she came to us, it was very moderate, wind southwest; the next day was somewhat stormy, wind from northeast to north, and so thick that we couldn't see over half a mile during the forenoon; in the afternoon it cleared a little.

9th Int. When the Kensington came to you, state what was said and done.

Ans. When she got within hail of me, Capt. Norris hailed me, asking me what I wanted of them. I told him I wished him to tow me into Hyannis, if possible. Another voice then hailed, asking how much water I had alongside; I told him four and a half fathom. The schooner then anchored, Capt. Norris, Capt. Gray, and two or three others, came on board from her. I said to Capt. Norris, "I wish to make no bargain, but if you can get me into Hyannis, I presume you will be well paid." He replied that he didn't wish to make any bargain; Capt. Gray also said about the same thing. We then went to work, heaving in our chain with our own crew, while Capt. Norris and the schooner's crew took their boat and got the hawsers on board. After heaving in our chain, we found no anchor fast to it. It was now nearly calm. The schooner did the best she could, and towed us about six miles; the wind then breezing up northeast, we had to come to anchor, as that wind was dead ahead; we lay at anchor until daylight; at daylight we attempted to get under way; we parted one hawser and slipped the other. They

then asked me if I wished to be taken off; Capt. Norris asked me. I told him no. The schooner was under strong headway, with a fresh breeze, and he was almost out of hearing by the time he had asked me the question, but he came back again and asked me the same question again; I asked him how far he judged we were from the land; he said six or seven miles; I asked him where he was going; he said to Hyannis; I said, "Will you come back as soon as you can?" He said he would. During this time, I had made up my mind not to leave, and told him so; he then said something which I could not understand, and left me. He never returned.

10th Int. Please point out on the chart in what place he left you at anchor.

Ans. We were at the place which I have marked "A." It was about two miles due south from the light-boat, near the Bishop and Clerks.

11th Int. How were the wind and weather during the time the schooner had you in tow?

Ans. The first part was moderate, nearly calm; the latter part was a strong breeze from northeast to nearly north.

12th Int. How were the wind and weather when the schooner left you, and until you saw the Forbes?

Ans. When the schooner left us it was stormy and snowing, with the wind about north; it worked gradually round to northwest; the next day, Friday, the wind was northwest, a strong breeze, very cold, considerable ice; Saturday the wind was southeast, very light; between two and three P. M. the Forbes came to us.

13th Int. With the wind as it was when the Kensington left you, would you have been likely to drift on the Horse Shoe had you remained at point "X"?

Ans. No, sir; when she left us the wind was north.

14th Int. If you had been at point "X" on Wednesday, Jan. 21st—Thursday, 22d—Friday, 23d—or Saturday, 24th—and had drifted, where, in your judgment, would you have been carried, as the wind was on those days?

Ans. Had we drifted at all, we should have gone towards the northeast point of Nantucket; as the wind was on those days we should have gone that way—whether on to the point, or past it and to sea, I can't say. On Saturday the wind was southeast, but very moderate; if we had been at the point "X" then, we should have laid still; if the wind had blown *hard* from the southeast, we should probably have drifted on to the Horse Shoe.

15th Int. How was the wind on the 21st, 22d, 23d, and 24th of January? from what point, and how strongly did it blow?

Ans. On the 21st, southwesterly and moderate; on the 22d, north to northwest, strong breeze; on the 23d, northwest, strong breeze; on the 24th, southeast in the morning, and moderate.

16th Int. Did you ask any stores or provisions from the schooner? If yea, did you get any?

Ans. I don't know that I asked for any. I remarked to Captain Gray that I was getting short; I didn't get any.

17th Int. Whether or not did you ask them to telegraph your owners, or did they say they would do so?

Ans. I did not ask them. I did not understand them to say they would.

18th Int. How and when did you lose your anchors?

Ans. I presume one went when we went adrift on the night of the 18th January. I cannot tell when I lost the other; I supposed it to be at the end of the chain, until we hove in the chain when the Kensington first came; then we found it gone; when it went I cannot say.

19th Int. Had you any other anchors on board the bark? if yea, what were they?

Ans. I had two more; one weighed from 700 to 800 pounds, the other was a small kedge anchor, of about 200 pounds; we had a 10 inch hawser about 70 fathom long; no other ground tackle.

20th Int. Did you drift any while you lay at point "X"? How do you know?

Ans. I think not; from the bearings and distance of the buoy on the southeast part of the Horse Shoe, I don't think I drifted at all; it was quite near me, and I could have seen if I had done so.

21st Int. If you had at any time found the bark drifting, what could you have done to prevent it?

Ans. I could have bent on my ten inch hawser to my stream anchor, and thrown it overboard; I have done that once before.

22d Int. How long after the schooner left you at point "A," did you lay at anchor there? Did the bark drift any during that time? How do you know?

Ans. She left us at seven o'clock on Thursday morning; we lay at anchor there until the Forbes came to us on Saturday afternoon. I don't think the bark drifted any during that time, because the light-boat was about in range with the steeple on shore all the time in the daytime; in the night, the light-boat was directly in range with the north star.

23d Int. State what occurred after the Forbes came to you?

Ans. She took us to Hyannis that night. The next morning, Sunday, Jan. 25, we left there; on Saturday night we went within about a mile of the breakwater outside; it was as near as we could get for the solid ice; I have marked the place "B" on the chart before referred to; it is close to Great Rock. Next morning, seeing no prospect of getting coal or getting into the harbor, we left for Provincetown; we found the ice much harder than we expected in the Sound, and did not get more than ten miles in the whole day; we anchored the steamer once—found the anchor would not hold her; towards night of Sunday we hove up the anchor; as we could do nothing else, we had to let her go where the ice carried her; at six o'clock Monday morning we touched on the shoal off Great Point,

Nantucket; in about two hours we went over to the eastward, the tide and ice took us over. Having been all night without steam, we now got up steam, made very slow headway, got about four miles from the light-house on Great Point, and the steamer got stuck fast, and remained so until we chopped away the ice round her with axes; after getting her relieved, we then parted the hawser; there was then no clear water to be seen from the steamboat's mast-head; finding the coal getting very short, we put back to the bark, anchored her, and took off all hands and started for Princetown for coal.

24th Int. How was the bark steered while in tow of the Forbes?

Ans. We could hardly tell; we were in so much ice all the time that we couldn't tell whether she would have steered in clear water or not; she would go ahead sometimes half a length, and sometimes a length at a time, and then bring up; we had a hawser over the stern to steer by.

25th Int. When you left the bark, how was she anchored, in what place, and how distant from the shore? Do you know how the chain was secured?

Ans. She was anchored with the stream anchor and about one hundred fathom of chain; the place was between four and five miles east from the light-house on Great Point, Nantucket, in nine fathom water; I have marked the place "C" on the chart before referred to. I do not know how the chain was secured.

26th Int. Had you any difficulty in going to and from the Forbes to the bark, or in taking your crew off?

Ans. None.

27th Int. When you left in the Forbes, did you intend to return to the bark? If yea, how soon?

Ans. We did mean to return; the captain of the Forbes told me that he had coal in Provincetown, and should be back next day. We were disappointed about coal, and didn't come back next day; when we left the bark, the captain of the Forbes calculated to be back next day, but I had been so often disappointed that I didn't hardly know what to expect.

28th Int. Whether or not was it your own intention, when you left the bark, to return with your crew in the steamer to the bark, as soon as you could get coal?

Ans. It certainly was.

29th Int. Did you inform your crew what your intentions were in that respect?

Ans. I did inform them so, when I came aboard the bark from the steamboat, after parting the hawser. I had been on board the steamboat from the time we left Hyannis until then. I called all hands and told them that the steamer was short of coal, and must go to Provincetown for more; that she would come back as soon as she could get the coal; that if any three or four of them, or more, wanted to stay aboard, they might do so—but that they could do as they chose; that if they were coming, they must come at once, as

the steamer had a strong head of steam up, and no coal to spare. I told them that I was going in her, and should leave my things aboard until I came back, and that if they were going they had better do so too.

30th Int. Did you and your crew go back in the Forbes to the bark, and on what day? At what hour did you leave Provincetown? At what hour and on what day did you reach the place where you had left the bark at anchor?

Ans. We started to go back on Wednesday, January 28th, at three o'clock A. M. It took us until seven to get clear of the ice in Provincetown harbor. When we got into Provincetown first, we didn't find the coal which Capt. Morris expected. On Tuesday, January 27th, we got some coal from the shore—small stove coal. We had about thirty tons of it on board when we started from Provincetown next day—all we could get. After getting out as far as Cape Cod, we found the coal burning very fast. Fearing it would not last us to the bark and back again, we put about, and went back to Provincetown. There we lay until Friday morning, January 30th. A schooner then arrived from Boston with coal for the steamer. We took it on board during the day, and at one A. M., on Saturday, started for the bark. We arrived at the place where we had left her about nine, or between nine and ten, the same morning. As we could not find her, we came over to the Powder Hole, and there found out where the bark was. We arrived there between eleven and twelve.

31st Int. How were the wind and weather from the time you left Provincetown the last time until you reached the place where you had left the bark at anchor?

Ans. The wind was about east-northeast when we passed Cape Cod. By twelve o'clock the wind got east. There was a strong breeze. In the afternoon it blew a moderate gale, with rain and snow. When we left Provincetown the wind was very moderate. It breezed up gradually, and by the time we reached the place where we had left the bark, it was blowing quite a strong breeze, though not a gale.

32d Int. Where and in what place did you leave your things, when you left the bark, in the Forbes?

Ans. I left most of them in my state-room; others in the cabin. I think I left my spy-glass on deck.

33d Int. Did you go on board the bark afterwards in Hyannis? If so, when? How soon after you reached there? State the condition of things on board.

Ans. I did go on board at Hyannis on February 1st, Sunday, about ten o'clock A. M., immediately after I reached there; we went right alongside with the steamer; I found the vessel injured pretty badly in two or three places; I saw that before I got alongside; one boat was missing; there was a place in the larboard main channels stove quite badly; a place on the stern badly stove; the

ten-inch hawser which I have mentioned was all chafed to pieces and spoilt; on going into the cabin, I found a trunk broken open, which was on freight, and contained a few clothes, some papers, and was filled up with pecan nuts; the nuts and shells were scattered all about the cabin; I was then near home, and thought I would go home; on coming to look round, my clothes were all gone—I could find no clean clothes at all; I made complaint to the mate of the Westernport, and most of my things were brought back, I don't know by whom; I had some sixty-five dollars in my chest, which was gone; the mate of the Westernport brought back twenty-five and a half; about forty-two dollars of it was in gold and silver, rolled up in a piece of newspaper; this belonged to one of my sisters; alongside of it, in the till of my chest, I had a red purse containing between twenty-two and twenty-three dollars, also in gold and silver; I have never seen the purse nor its contents; the mate of the steamboat gave me some money rolled up in a newspaper, on Sunday, after I had been on board about an hour; this I supposed to be the sailor's money, and handed it to him; he opened it immediately; I didn't examine it very closely; I was expecting to get my purse, but did not.

34th Int. Did you make yourself known as the master of the bark when you went on board of her in Hyannis?

Ans. I did. They refused us admittance until I told them who I was.

35th Int. Was it before or after you had complained of the loss of the money that the mate of the Westernport returned the newspaper package containing money?

Ans. It was afterwards.

36th Int. Where was the mate of the steamer when you complained of your losses? Where did he return the package?

Ans. It was aboard of the bark. I couldn't say whether on deck or in the cabin.

37th Int. Do you know whether the crew complained of having lost their things, to the mate and engineer on board?

Ans. I heard several of them complain. They all came to me and complained that they had lost everything. I can't say positively that I heard any of them complain to the mate.

38th Int. What articles did you lose besides the money, and what would it cost you to replace them?

Ans. I lost about a dozen and a half pair of socks—about half woollen and half cotton ones, and a razor, and a pair of flannel drawers, and two or three silk handkerchiefs. I should judge that eight or ten dollars would replace all I lost except the money. These were the things which I didn't get back.

39th Int. Where do you belong, and how long have you followed the sea?

Ans. I belong to Barnstable, Cape Cod. I have followed the sea forty years.

Cross-interrogatories propounded on behalf of owners and crew of the Kensington.

1st Cross-interrogatory. What was the tonnage of the bark Island City, and the nature and value of her cargo, the value of the freight and of the vessel, and the number of her crew?

Ans. Her tonnage was about 550 tons measurement; her cargo was about 1050 bales of cotton and about 1200 dry hides. I don't know the value of the cargo. I think the vessel was worth about $30,000 before she was dismasted; but I don't know accurately. The crew was fourteen, all told, including officers and cook.

2d Cross-int. What was the condition of the crew at the time the Kensington came to you, and how was the bark supplied with provisions and oil at this time?

Ans. They were all well. We had provisions enough to last us probably a week. We had very little oil.

3d Cross-int. How far had you drifted, from where you first anchored, when the Kensington reached you?

Ans. I should think six or seven miles.

4th Cross-int. Had you a rudder, spars, or anchors, when the schooner reached you?

Ans. We had no spars or rudder. We had the stream and kedge anchors on deck. I supposed we had another anchor on the end of the chain.

5th Cross-int. Had you any, and what boats at this time, and were they sufficient to have saved those on board the Island City, the ice and weather being as they were?

Ans. We had two good boats. We could do nothing with boats at that time. Boats couldn't move through the ice.

6th Cross-int. When you came to anchor at the point "O," did you let go both anchors, or how otherwise?

Ans. We let both anchors go, one directly after the other.

7th Cross-int. When did you first learn that your anchor was gone, and that you held only by the chain?

Ans. Not until we hove up our second chain, when the Kensington came to us.

8th Cross-int. Would you have hove up or paid out chain, if you had found yourself drifting?

Ans. We had paid out all we could, and shouldn't have hove up. I should have bent on the other anchor and put it out.

9th Cross-int. Who was in command of the schooner Kensington at this time?

Ans. Capt. Norris appeared to be the man in active command. He hailed me, and I had most of the talk with him.

10th Cross-int. How long were you in bending on the stream anchor? How long would it necessarily occupy?

Ans. We were half an hour doing it. We did it about as quick as we could.

11th Cross-int. When and where did you lose your rudder, and what steering apparatus had you to steer the bark while she was in tow of the Kensington?

Ans. We lost it about *about* four o'clock on the morning of the Monday before the Kensington came, January 19th. We had nothing to steer her with while in tow of the schooner.

12th Cross-int. Were you not in a place and situation of danger when the schooner Kensington reached you, and what was the danger to which you were then exposed, and whence did it arise?

Ans. I think we were in danger of the vessel going ashore in case of a gale of wind, or being blown to sea. We didn't apprehend much danger to our lives. The danger arose from our want of anchors and spars and sails.

13th Cross-int. What was your condition when the Kensington left you? How did it compare with the situation where she found you, as to safety?

Ans. I didn't consider that we were clear of danger when she left us, but thought we were in a safer place than where she took us from.

14th Cross-int. How was the anchorage where she left you? Was it not good, and less exposed than where she took you?

Ans. I think there was little more water. I didn't notice what the bottom was. It was a little less exposed than where we were before.

15th Cross-int. Was there a gale while you were at anchor, after the schooner left you, and before the Forbes came to you?

Ans. There was not a gale—it blew strong. There was a strong breeze. The schooner carried all sail when she left us. I think it blew as strong then as at any time before the Forbes came.

16th Cross-int. Whether or not have you said to any one, and whom, that the bark would have been lost, and all those on board, but for the assistance of those on board the Kensington?

Ans. I don't think I ever said any such thing. I am sure I never thought any such thing.

17th Cross-int. Have you not said that the bark and cargo were saved by the crew of the Kensington, or words to that effect?

Ans. I don't think I have. I may have said some things from which that might have been implied. I recollect saying that I didn't know when we should have got assistance, if it hadn't been for the Kensington?

18th Cross-int. Where would a northeast wind have carried you from point "X?" Did not a northeast wind blow on the morning of Thursday, January 22d?

Ans. It would have carried us across the southeast part of the Horse Shoe. Whether we should have touched or not is uncertain. It did blow northeast on the morning of January 22d.

19th Cross-int. How much water did you draw at that time?

Ans. About eleven feet.

20th Cross-int. To what danger, if any, did the Kensington expose herself in rendering you assistance? Was there not danger of the bark running into her while towing, and of being crushed by the ice?

Ans. I don't know that she exposed herself to any danger. I saw no danger of her being run into, or crushed.

21st Cross-int. Did not the bark run into the schooner while in tow?

Ans. Not to my knowledge. I was not on deck all the time.

22d Cross-int. Did any one on board the Forbes tell you how they heard where you were? If so, what was told you?

Ans. Capt. Morris told me he got the report from Boston.

Cross-interrogatories on behalf of the owners and crew of the Westernport.

23d Cross int. What was the weather when you left the bark in the Forbes? Was it very cold?

Ans. It was very cold. It was nearly calm.

24th Cross-int. At what time in the day did you leave the bark, and at what time did you reach Provincetown? How many miles were you from Provincetown when you left the bark?

Ans. We left her about twelve o'clock, and reached Provincetown a little after seven in the evening. I should think it was about seventy-five miles, clear round into the harbor.

25th Cross-int. Did you take any other vessel or boat in tow before you reached Provincetown? If so, state how and when. How much coal was there on board when you reached Provincetown?

Ans. We took in tow a light-boat, at fifteen miles south-southeast from Chatham. Capt. Morris was unwilling to take him, but finally did so. I should judge there was from two to three tons of coal left when we got in.

26th Cross-int. Had you not sufficient coal to have taken the bark to Provincetown, if it had not been for the ice and the cold?

Ans. We had enough to have taken her in if it had not been for the ice. The weather being cold made no difference in that respect.

27th Cross-int. Did you not leave the bark in the Forbes because you considered it unsafe to remain on board of the bark?

Ans. We did not so much on that account. I saw no special danger in remaining there. We were somewhat short of provisions, and the steamboat had no relief to give us. That was the principal reason why we left her.

28th Cross-int. Why, then, did you leave the bark if it was safe to stay in her?

Ans. Because we had but little provision, and the Forbes had none to give us; and because I thought that by taking all hands with us, we should expedite Capt. Morris in taking in his coal, and getting back so much the sooner.

29th Cross-int. Why, then, did you propose to some of the men to stay, if they chose to do so?

Ans. I was willing to give them the liberty of stopping if they wished to. If half of the crew only had gone in the Forbes, it would have been some help to Capt. Morris.

30th Cross-int. Were they to stop with nothing to eat?

Ans. I don't say we had nothing. We had nearly a barrel of salt beef.

31st Cross-int. Were these provisions enough to make it safe for half of the crew to remain in her, with the chance of relief?

Ans. There were provisions enough for half of the crew for a week.

32d Cross-int. Why did you not remain on board your own vessel, instead of leaving her in the steamer, if you considered it safe to do so? And why did you decide to go in the Forbes before you came on board the bark? And why did you tell your men that such was your decision?

Ans. I saw no special danger at the time. If there had come a strong westerly wind, and blown us to sea, we might have got hungry. If there had come a strong easterly gale, and blown us ashore, I should have felt my life tolerably safe, on account of the strength of the vessel and her small draught of water at the time. I think she would have gone up at high water where I could have walked ashore at low water; but I had already been in the ice long enough, and suffered enough from the cold, and, therefore, made up my mind to leave the vessel. I decided to do so, while on board the Forbes, for the reasons I have given. I told the men, because I had made up my mind to go.

33d Cross-int. Do you mean to say that there was no special danger to a vessel at anchor with the ground tackle she had then, in ice, at that season, without spars or rudder?

Ans. I don't know of any other danger except what I have mentioned. I can think of no other.

34th Cross-int. You mean, do you, the danger of being blown to sea or driven on shore?

Ans. Yes, sir.

35th Cross-int. Was there no danger of losing her remaining anchor by ice, or of being carried upon breakers or reefs by ice or by wind?

Ans. I really don't know how to answer such questions. There was no *special* danger of it. We might have taken fire or sprung a leak; but I saw no special danger of it.

36th Cross-int. Was there no danger of losing her remaining anchor by ice.

Ans. It held her to cut through very strong ice there, and I saw no danger of their being any stronger. That anchor held her in ice where the Forbes's anchor wouldn't hold.

37th Cross-int. Had you not previously lost two larger anchors by the ice?

Ans. Not by ice—by the gale.

38th Cross-int. Are you sure that the ice did not contribute to the loss of those two anchors?

Ans. When we went adrift, there was no ice in sight of us. We lost one then—perhaps both—I can't say. I am not sure that ice didn't contribute to the loss of the last one, because I don't know when it went.

39th Cross-int. If the Forbes's anchor had failed by ice, and you had lost two anchors by ice or the wind, or both, how could you feel confident that this small anchor would hold her against ice, or a gale, or both?

Ans. I had no confidence in anything, further than this: that it *did* hold her through very strong ice.

40th Cross-int. There is no doubt, then, in your mind, is there, that when you left the bark she was in some danger in case of a gale or of strong ice, or both?

Ans. I have already admitted that—that there was danger of her going to sea—danger of her going ashore. I consider a vessel down the harbor here in danger.

41st Cross-int. Do you consider a vessel at anchor in Boston harbor in no more danger than your vessel was where she lay, with only that anchor and no spars or rudder?

Ans. No I don't consider her in no more danger.

42d Cross-int. Is a vessel at anchor in Boston harbor in as much danger of being blown to sea as your vessel was?

Ans. No, sir.

43d Cross-int. Is a vessel at anchor in Boston harbor in as much danger of being blown ashore, or of being injured in case she goes ashore, as your vessel was then and there?

Ans. I don't think she is in as much danger of going ashore. I think she is in as much danger of being injured if she gets ashore, and rather more.

44th Cross-int. Where do you, in that answer, suppose your vessel to go ashore?

Ans. On the eastern part of Nantucket, where there is a clear sand beach, and no rocks.

45th Cross-int. How do you know she would go on there, and nowhere else?

Ans. I don't know that she would go anywhere. With an easterly storm she must have gone there, if anywhere.

46th Cross-int. If she were to go ashore, as you say she might, why do you think that the only place where she could go ashore?

Ans. Because Nantucket was to the westward of us; consequently, an easterly wind must blow us towards the island.

47th Cross-int. Is there no other gale than an easterly or westerly gale at that place and at that season?

Ans. Yes; we were liable to a gale from any quarter.

48th Cross-int. Might you not, then, have been driven ashore elsewhere than on that smooth sand beach?

Ans. Yes.

49th Cross-int. Was there not danger that the vessel might drift, by ice or gale, into a more dangerous position than you left her in—where she might be in danger of going upon shoals or breakers, or a bad lee shore?

Ans. Such a thing might be. The vessel was left exposed to all the common dangers of the ocean, from gales; but I saw no special danger from any quarter.

50th Cross-int. What do you mean, in that connection, by a special danger?

Ans. Had we left her, with a gale of wind blowing from the east, and dragging her anchor, I should have considered her in special danger of going ashore. Had the ice dragged the anchor at the time we left her, I should then have thought there was special danger of getting into a worse place.

51st Cross-int. If, when you left, you had seen such a gale coming up, should you have thought her in special danger?

Ans. I think I should. If I had seen any prospect of a gale coming on, I should have thought there was some danger.

52d Cross-int. By *special* danger, in this connection, you mean *imminent* danger, do you?

Ans. I suppose I do.

53d Cross-int. What you mean, then, is, is it not, that you thought it most probable that if she went ashore, it would be where you have said?

Ans. Yes. If she went ashore at all, I thought she would go on Nantucket.

54th Cross-int. Were there not shoals near your vessel, where she might have struck at a distance from the shore, in case she had drifted?

Ans. None between us and Nantucket.

55th Cross-int. Were there not shoals upon which she might have been driven by a gale from some other quarter than the east? If so, what and where?

Ans. There were shoals in almost every direction except between us and the land, and to the east. East was the ship channel.

56th Cross-int. On your first attempt to go to the relief of the bark from Provincetown, was there not considerable of a blow, or the signs of one coming up?

Ans. Yes, it blew quite strong that day, and looked as if it might blow harder.

57th Cross-int. After your return to Provincetown, did you not break the ice out of the harbor with the coal you had left?

Ans. We went and helped one vessel that was ashore, about one hour.

58th Cross-int. If there had been no ice to contend with, and no gale, how long would it have taken the Forbes to tow your bark from where you left her to Provincetown?

Ans. From eight to nine hours, I think.

59th Cross-int. If there had been no gale, or signs of a gale, would the Forbes have kept on, or abandoned the attempt to rescue her on that trip?

Ans. What he would have done, had the weather been pleasant, I can't tell.

60th Cross-int. What was the state of the weather on Saturday when you reached the place where you had left the bark? Had not the storm then commenced?

Ans. It was blowing a strong breeze. The storm had not then commenced.

61st Cross-int. Where had you last counted the money which you left on board?

Ans. The money in the newspaper was counted at Galveston. The money in the purse was counted on Tuesday, January 20th.

62d Cross-int. Who counted the money in the paper at Galveston?

Ans. The shipping master, who shipped the men, counted it in my presence.

63d Cross-int. [Objected to.] Did not Mr. Parker say to you that he had your money?

Ans. He did. I asked him to go aboard and get it then. He went, and brought me a part of it.

64th Cross-int. Was it on board the bark he told you so.

Ans. Yes.

65th Cross-int. Did he not go on board the steamer and bring you the paper with money in it?

Ans. He did.

66th Cross-int. At what hour did you reach the place where you had left the bark?

Ans. About nine o'clock on Saturday morning, or a little after.

67th Cross-int. Did you go directly from there to the Powder Hole? How far is it from the place where you left the bark? At what hour did you leave the Powder Hole?

Ans. We did not go directly to the Powder Hole. I think it is twelve or fifteen miles from the place where we left the bark. We left the next day about eight o'clock.

68th Cross-int. Where did you go before going to the Powder Hole?

Ans. We went to the Cross Rip light-boat to inquire about the bark. The light-boat was about six miles west-northwest from Great Point; she had drifted to that place in the ice; it was not her proper place. We went nowhere else.

69th Cross-int. Why did you remain at the Powder Hole until eight o'clock next day?

Ans. Because the weather was thick in the morning. Soon after

we got into the Powder Hole, it came on to storm, and continued to storm all the afternoon and the first part of the night. Next morning we got up steam very early; but, it being thick, we didn't leave until the time I have mentioned.

70th Cross-int. When you left the Powder Hole, did you go directly to Hyannis? How far is it? When did you reach there?

Ans. We did. About twenty miles. About ten o'clock.

71st Cross-int. What was the state of the weather during the day on Saturday? Please describe it particularly.

Ans. When we left Provincetown, at one A. M., the weather was moderate, a little cloudy; when daylight came on, the wind began to breeze; about eight to nine there was a strong breeze, appearance of a storm; at twelve, a moderate gale; began to snow, the wind about east; during the afternoon the wind increased a little more; soon after dark it moderated; it began to snow soon after twelve; snowed about three hours, and then turned to rain; from eight to about twelve the wind was east-northeast; the rest of the day east.

72d Cross-int. What is the course and distance from the place where you left the bark to Hyannis?

Ans. About northwest. I should judge about twenty miles.

73d Cross-int. Was not the Island City injured by coming in collision with the Westernport while she was towing her? If not, how did the injuries you have mentioned happen to her?

Ans. I don't know. I wasn't there. The injuries took place while I was absent.

74th Cross-int. Was not your hawser used in towing the Island City and injured, as you have described, while being so used? If, not, how was it injured?

Ans. It was injured while I was absent. I can't tell how.

[Adjourned to March 17th, at 9½ A. M.]

Cross-interrogatories propounded on behalf of Joseph H. Adams, President, &c.—March 17th, 1587.

75th Cross-int. You have said, in answer to the 57th cross-interrogatory, that the Forbes assisted a vessel after reaching Provincetown with the coal she had left. Was not this after your return from your first and unsuccessful attempt to reach the bark on Wednesday, January 28th, after you had taken on board the stove coal, and with the remainder of that coal?

Ans. It was.

76th Cross-int. How much time elapsed after you went from the Forbes on board the bark, before you and your men returned to the steamer?

Ans. Twenty to twenty-five minutes.

77th Cross-int. If you had not intended to return to the bark, could you not, and *would* you not, have taken time to remove your clothing, money, and other valuables from her?

Ans. I certainly should.

78th Cross-int. Were not the *reasons* why you allowed your crew to go in the Forbes to Provincetown, the cold, your fear that the provisions you had on board would not hold out until the Forbes's return, and in order that they might assist in coaling the Forbes for the sake of greater dispatch?

Ans. Those were my principal reasons.

79th Cross-int. Did your crew, in fact, assist in putting the coal aboard the Forbes?

Ans. They did.

80th Cross-int. Did you calculate the chances of your vessel being driven to sea or ashore before leaving her to go in the Forbes, and did such calculation or apprehension induce you leave her?

Ans. I thought of those chances; but everything had to be done in a moment. I was not induced to leave her on that account.

81st Cross-int. Did you not, at the time you left the bark, fully expect to find her at anchor where you left her when you should return?

Ans. I did.

82d Cross-int. Did you and your crew, in fact, leave the bark and go in the Forbes from any apprehension of special dangers of the wind and sea from remaining by her?

Ans. No, sir.

83d Cross-int. The known possibility of such dangers of wind and sea did not, then, induce you to go in the steamer, did it?

Ans. No, sir. I answer for myself; I don't know about the crew.

84th Cross-int. Taking the weather as it actually proved, would not the bark, in your opinion, have lain in safety, as you anchored her, until your return, had she not been removed by others?

Ans. I think she would. I have no doubt on that subject.

Further Interrogatories propounded on behalf of Claimants.

1st Interrogatory. You have stated that you thought the vessel was worth $30,000. Is that opinion founded on your own knowledge, or on the estimate of others?

Ans. More on the estimates of others than on my own knowledge.

2d Int. [Put *de bene esse*, in case the 63d cross-interrogatory is admitted.] Did Parker inform you that he had any of the money until after you complained that it had been taken out of your chest?

Ans. He did not.

3d. Int. Had he time and opportunity to do so, if he had seen fit?

Ans. I made my complaint very quick after I got aboard: as soon as I got to my chest.

Further Cross-Interrogatories on behalf of the owners and crew of the Kensington.

1st Cross-interrogatory. Have you had any conversation with any of the owners, or the master, or the crew, on board the Kensington,

at the time she came to your assistance, or since the occurrence, and with whom?

Ans. I have had a few moments' conversation with Captain Norris and Captain Gray, and with Mr. Norton, one of the owners; this was since I came back to shore. I had a little talk with Captain Gray at Hyannis—the rest, with the others, was in Boston.

2d Cross-int. Could you—with the chain you had out and your stream anchor, and the anchorage and situation in which you were when the Kensington came to you—have ridden out a gale there?

Ans. I think we could—unless a very high one.

3d Cross-int. [Put on behalf of Westernport—objected to on behalf of Claimants.] To whom did you first complain that you had lost your money, and who first informed you that it had been saved? Were you not so informed as soon as you mentioned the loss of it?

Ans. I spoke to no one in particular; I spoke it loud to all who were in the cabin; they were all strangers to me. Mr. Parker first informed me that he had it—I think as soon as I mentioned the loss of it.

[The witness here said, the parties having finished their examinations:] "I wish to add here, as a matter of explanation, that many questions have been asked me about danger, and I want to say, that a sailor is always in danger, but seldom thinks so unless he sees the danger before him." ASA STEVENS.

The Deposition of Samuel S. Smith, taken on behalf of the Claimants aforesaid—March 17, 1857.

1st Interrogatory. State your age and place of residence, and how long you have followed the seas.

Ans. I am thirty years old; I live at Boston; I have followed the sea twenty years.

2d Int. Were you chief mate of the Island City on her late voyage from Galveston to Boston? Were you on board when the Kensington took you in tow?

Ans. I was.

3d Int. After the Kensington left you, did you lie at anchor till the Forbes came? If yea, how did the bark lay? Did she drift any?

Ans. We did so lay at anchor. The bark lay very well; she didn't drift any.

4th Int. How were the wind and weather during the time the schooner towed you?

Ans. Part of the time calm; the latter part there was a light breeze, with snow.

5th Int. Were there any collisions between the bark and schooner during the towing?

Ans. No, sir.

6th Int. How were the wind and weather after the schooner left you?

Ans. The wind was from the northward—I don't remember whether it was a little east or a little west of north—at first; it worked round into the northwest; on Friday it was very cold, with a strong northwest breeze; on Saturday it moderated down and came to the westward; it was about calm when the Forbes came to us on Saturday afternoon.

7th Int. After the Forbes had towed you some time, did you leave the bark and go in the Forbes to Provincetown?

Ans. I did.

8th Int. Where was the bark anchored when you left her, and how distant was she from the light? How was she anchored, and how was her chain secured?

Ans. She was anchored off Nantucket Island, about six miles from Great Point Light; she was anchored with a stream anchor and part of two chains, about 115 fathoms in all; the end was fast to the main stay bitts, forward of the foremast; the chain was taken round the bitts with two half-hitches, and the end seized back.

9th Int. How do you know it was so secured?

Ans. Because I saw it done; and I cast it off again when I came back to the bark in Hyannis.

10th Int. How much provision had you when you left the bark, and in what condition was your bread?

Ans. We had bread enough to last not more than one day, and that was wet; we had some beef and some pork—about a week's provision of them; we had a little meal; we had half a cask of water.

11th Int. Who was last on board the bark when you left her?

Ans. I was the last of those who belonged to her; one of the steamboat's men stayed to cast off her hawser.

12th Int. When you left the bark, whether or not did you intend to return to her in the Forbes, with the crew? If yea, how soon?

Ans. I intended to be back the next morning; it was our intention to come back then.

13th Int. Did you make any attempt to go to the bark in the Forbes? If so, did you succeed in reaching her? If not, why not?

Ans. We did make one attempt, and did not reach her, because the ice and weather prevented us; the wind, coming from northeast, drifted the ice into the mouth of Provincetown Harbor and blocked it up; I am not sure about the exact direction of the wind, but it was so as to drift the ice in there; it took us four hours to get out to Race Point, clear of the ice; by the time we got there it was blowing quite strong from northeast; we kept on, however, down to the Highland Light, Cape Cod; we found it blowing so that we couldn't do much, and we hadn't much more coal than would take us there and back, and the gale was increasing every minute—so we came back.

14th Int. Taking the wind and ice as they then were, whether or

not had you coal enough to have gone to the bark and towed her back through the ice?

Ans. We did not—to the best of my knowledge; I can't tell how much coal there was aboard; I looked down the hole, and saw it going pretty fast; but I couldn't say how much there was there.

15th Int. Did you afterwards go to the place where you had left the bark, in the Forbes, on Saturday morning? About what hour did you reach there on Saturday?

Ans. I did. We left Provincetown about one o'clock A. M.; we crossed Pollock Rip about seven, and went over to where we had left the bark; we got there about 8 or 8½, I should judge.

16th Int. How were the wind and weather from the time you left Provincetown on Saturday morning until you reached the Powder Hole?

Ans. Strong breeze from the eastward; I think the snow didn't begin until after we got in the Powder Hole?

17th Int. Where and in what place did you leave your things when you left the bark in the Forbes?

Ans. In my room mostly—some in the cabin; I had some in two trunks, others hanging up in the room.

18th Int. Did you go aboard the bark afterwards in Hyannis? If yea, in what condition did you find your things?

Ans. I did go aboard afterwards at Hyannis. I didn't find my things; when I got aboard they were not there.

19th Int. Had your trunks been opened, and the contents carried off?

Ans. They had.

20th Int. Did you complain to those on board the bark that all your things, and those of the crew, had been taken?

Ans. I did.

21st Int. What things, if any, were never returned to you? What would it cost to replace them?

Ans. I didn't get back anything but my quadrant; I lost a Russia cap, a cylinder watch, a pair of boots, a pair of pants, five white shirts, four pairs of drawers, five inside shirts, a black cloth coat, two neckhandkerchiefs, eight pairs of stockings, two razors, a clothes brush, two pairs of cloth pants, a pair of shoes, a pair of slippers, four bound books, some novels, a work box, and four checked shirts. It would cost me about seventy-five or eighty dollars to replace them—not less than that.

22d Int. Did you tell those in charge of the bark that you had got none of your things back?

Ans. I did; I told Captain Barry, captain of the Westernport.

23d Int. Did you see any of your things on board the steamer?

Ans. I did; I saw two of my books there; I saw also my quadrant, the captain's quadrant, the ship's barometers, the spy-glass, and case of instruments—the last belonged to one of the sailors; I spoke to the man that told me he took them about the books; I think he was

clerk of the boat; the mate told me he took the quadrants and barometers and such things himself.

24th Int. Did you ask to have your books returned? Did you ever get them?

Ans. I did ask for them. I never got them.

Cross-interrogatories on behalf of the owners and crew of the Schooner Kensington.

1st Cross-int. Were you drifting when the Kensington reached you?

Ans. No, sir.

2d Cross-int. How were you held at that time?

Ans. By part of two chains.

3d Cross-int. Had you any control whatever over your vessel at that time?

Ans. We had her stopped and riding—that's all the control we had. We supposed we had an anchor down.

4th Cross-int. How much water did the Island City draw, and how much had you when the Kensington reached you?

Ans. She drew eleven feet aft; we had from 4½ to 5 fathoms, I think.

5th Cross-int. How long did it take you to bend on your stream anchor?

Ans. About from half an hour to an hour.

6th Cross-int. Had you any spars or rudder when the Kensington reached you, and what anchors? Had you not lost your two best anchors?

Ans. We had no spars or rudder; we had a small stream anchor and a kedge; we had lost the two best anchors I presume; we knew we had lost one, and when the chain came in the other was gone.

7th Cross-int. Had you found yourselves drifting where the Kensington reached you, what should you have done?

Ans. We could have put out our stream anchor and hawser, and the kedge with it; that is what we should have done—because it was all we could do.

8th Cross-int. In the condition in which you were when the Kensington reached you, where would a northeast wind have carried you? What was the wind of the night and next morning after the Kensington reached you?

Ans. I don't suppose that she would have drifted anywhere; the wind was about north; a strong breeze in the morning, nearly calm in the evening; in the evening, when she came to us, it was nearly calm; next morning there was a strong breeze from the northward.

9th Cross-int. Where would the strong breeze which you say prevailed on the morning of Thursday have carried you? Do you mean to say that you would have been held where you were by the chains?

Ans. I mean to say that we should have been held where we were

by the chains; I don't mean to say it was impossible that we might have drifted; I only give my opinion.

10th Cross-int. How much of a wind could you have ridden out with the chains only?

Ans. I can't say; I think with the wind as it was, northeast, she would have rode out a heavy gale; the wind was that way when we cut away our masts, and we had ridden as we were through a heavy gale; my own belief is, that the chain had got caught round something, and that with the wind in that quarter it would have stayed so.

11th Cross-int. What wind, if any, would have carried you upon the Horse Shoe, from the point where the schooner found you?

Ans. A northeast wind, if any.

12th Cross-int. How far had you drifted from where you first anchored, to the point where the Kensington reached you?

Ans. I can't tell that; I am not sufficiently acquainted round there to tell; I should judge it was six or seven miles.

13th Cross-int. What do you mean by saying that you had ridden out a gale, with your chains only?

Ans. I mean that we had quite a strong gale after our masts were cut away; the vessel started on the first night after we anchored, and we tried to give her chain on both anchors; at first she wouldn't take it at all, but we finally got her to take chain on the big anchor; we concluded then that that anchor was good, but I have since believed that both went at the same time; and if they did, then we rode out that gale with the chains alone.

14th Cross-int. Do you *know* when you lost either or both of your anchors?

Ans. I know when we lost one; I don't know positively when we lost the other.

15th Cross-int. If you supposed you had an anchor down when the Kensington reached you, how can you say whether you had ridden out a gale or not, with your chains only?

Ans. We didn't know at that time whether we had an anchor or not; I cannot say, except as my opinion, whether we had or had not rode out a gale with the chains only.

16th Cross-int. Was not the Island City, in the situation in which she was when the Kensington reached her, and in her condition, *in peril*, and what was that peril? Was there danger of her going ashore on the Horse Shoe, or elsewhere?

Ans. She was in some peril; there was danger of her going ashore on any of the shoals, provided she parted the chain or dragged it; ice or sea, or anything else, might have parted the chain or drifted the vessel, but I can't say what would have happened.

17th Cross-int. Was there no ice about your vessel when the Kensington reached you?

Ans. There was field ice drifting about in sight; there was not a heavy body of ice, as there was afterwards.

18th Cross-int. Whether or not was there any danger to your vessel from this ice, and what, in the situation in which you were?

Ans. There was some fields passed us, and didn't break her adrift; some other field might have come and broken her adrift.

19th Cross-int. Whether or not was there danger of the bark running into the schooner Kensington while in tow?

Ans. No, sir.

20th Cross-int. After the schooner left you, and until the Forbes reached you, did you remain at anchor where she left you? What was the anchorage, and was there a gale while you were at anchor?

Ans. We did remain at anchor there; there was eight fathom water, muddy bottom—good bottom; there was a moderate gale while we were there; it didn't blow very violent.

21st Cross-int. Could you, with the chain you had out and your stream anchor, and the anchorage and situation you were in when the Kensington left you, have ridden out a gale there?

Ans. I can't say; we did ride out a moderate gale, as I stated before.

22d Cross-int. To what dangers did the schooner Kensington expose herself and those on board, in coming to your assistance?

Ans. She exposed herself to the danger of not getting back again; it shut in thick about the time she left us, and it was blowing strong, so that he was afraid he wouldn't find the way into Hyannis again.

23d Cross-int. Had you gone ashore on the Horse Shoe, could you have saved the vessel, or cargo, or lives?

Ans. I couldn't say; my opinion is, that the bark would live out most any gale on any shoal where there were not rocks.

24th Cross-int. Have you not said, or heard said by some on board the bark, that your bark would have been lost, and those on board of her lost, but for the assistance of those on board the Kensington?

Ans. No, sir.

25th Cross-int. Where were you when the Kensington reached you? State exactly how far from the Horse Shoe.

Ans. I should judge about a mile to the northward of the buoy on the Horse Shoe.

Cross-interrogatories propounded on behalf of Joseph H. Adams, President, &c.

26th Cross-int. Was not the ice much heavier, and the tide much stronger, while the Forbes towed you, than it was while the schooner did?

Ans. It was.

27th Cross-int. Did not the bark, in consequence of such ice, wind, and sea, come in collision with the Forbes during such towing?

Ans. She did, once.

28th Cross-int. Was the Forbes able to make any headway with the bark at the time she left her to go to Provincetown?

Ans. She was not.

29th Cross-int. Why not?

Ans. On account of the ice.

30th Cross-int. Had there been no ice, could not the Forbes have taken the bark into Provincetown, with the coal she had?

Ans. She could.

31st Cross-int. How much time elapsed after Captain Stevens came on board the bark from the Forbes, before he and the crew returned to the steamer?

Ans. About twenty minutes.

32d Cross-int. Did you, or did any of the crew to your knowledge, take away anything, with reference to not returning, or with any intention not to return?

Ans. I didn't myself, and don't know of any one else doing so.

33d Cross-int. If you had not intended to return, could you not, and *would* you not, have taken time to have removed your clothing and other valuables?

Ans. I could, and would.

34th Cross-int. Did you consider that there would be any danger in remaining, except from want of provisions?

Ans. No, sir.

35th Cross-int. Had there been a full supply of provisions on board, should you have had any hesitation to remain on board the bark?

Ans. None whatever.

36th Cross-int. Did you not, at the time you left the bark, fully expect to find her at anchor where you left her, when you should return?

Ans. I did.

37th Cross-int. Did you, or to the best of your knowledge and belief any of the crew, leave the bark from any apprehension of special dangers of the wind and sea in remaining by her?

Ans. No, I guess, none of them did; I know I didn't.

38th Cross-int. The knowledge that such dangers *were possible* did not, then, induce you to go in the steamer?

Ans. It did not.

39th Cross-int. Taking the weather as it actually proved, would not the bark, in your opinion, have lain in safety as anchored by you, until your return, if she had not been removed by others?

Ans. I think she would.

Cross-interrogatories on behalf of the owners and crew of the Westernport.

40th Cross-int. For how long a time should you have been willing to be left on board the Island City, in the condition in which she was when you left her, if she had had a good supply of provisions on board?

Ans. I don't know how long I should have been willing to stay;

I had stayed by her nine days in that condition, and should not have been afraid to stay nine more.

41st Cross-int. Was she surrounded by ice when the Forbes left her? If so, what was the thickness of the ice, and how far did it extend around you?

Ans. She was surrounded by ice; it was solid ice, some of it four feet thick; it extended as far as I could see—five or six miles—all round.

42d Cross-int. Did you not have a good supply of small stores on board?

Ans. No, sir; we had some tea and coffee, no sugar or molasses; I don't remember anything but tea and coffee; we had been borrowing sugar from the Forbes.

43d Cross-int. Did you not have bread that had not been wet? Was there not a basket of bread that had not been wet?

Ans. There was a basket of bread that had not been wet; it was under the captain's berth; it had about thirty biscuits in it, which I had borrowed that morning from the Forbes; there was no other bread on board that hadn't been wet, to my knowledge.

44th Cross-int. Was the bread that had been wet so much injured that it was not fit to eat?

Ans. It was not fit to eat; but we had been obliged to eat it before the Forbes came to us.

45th Cross-int. For how long a time before the Forbes came to you, had you been eating that bread?

Ans. About two days.

46th Cross-int. Why did you not remain on board the bark, instead of leaving her in the Forbes?

Ans. Because I thought I could do more good by going in the Forbes. I could do no good on board the bark.

47th Cross-int. Was that the only reason you left the bark and went in the Forbes?

Ans. It was.

48th Cross-int. Mention all the articles on board the Westernport, belonging to you.

Ans. A quadrant and two books—that's all, except three cats which belonged to me.

49th Cross-int. What became of the quadrant, the books, and the cats?

Ans. The quadrant was returned to me—I took it with me; and also the cats. The books are there yet, I suppose: I never got them.

50th Cross-int. Did you not tell some person on board the Westernport that you would give him the books?

Ans. No, sir.

51st Cross-int. Did you not say that you did not want the books, or did not care about them—or words to that effect?

Ans. I don't remember saying that; I told the young man to re-

turn them the last time I saw him, and he said he would return them in Boston; I told the stewardess that she might finish reading one of them before it was returned.

52d Cross-int. Were not those books on board the Westernport with your consent? What were the books? How many volumes, and how many pages in each?

Ans. They were not left with my consent, except as I have stated about one which the stewardess was reading; the young man told me he had lent it to her, and I said she might finish reading it; this was the only bound book I saw there; I saw a novel in another man's pocket. The books I lost were two volumes of Irving's works, Josephus's complete works—those I didn't see; the one the stewardess was reading was The Watchman. There were four bound volumes altogether.

53d Cross-int. [Objected to by claimants.] Did Mr. Parker tell you that you might search the Westernport, if you would like to, for the things you had lost.

Ans. He said I might search his apartment—not the Westernport.

54th Cross-int. Why did you not do it?

Ans. I did look there; that is where I found the quadrant and barometers, and such things.

55th Cross-int. Why did you not search other parts of the vessel?

Ans. Because I had no authority to do so.

56th Cross-int. [Objected to by claimants.] Did not Mr. Parker tell you that you might search other parts of the vessel, besides his room; and why did you not do it?

Ans. He did not tell me I could search any other part.

57th Cross-int. [Objected to by claimants.] Had not Mr. Parker told you that your quadrant, cats, and books were on board the Westernport, before you went on board of her?

Ans. He had.

58th Cross-int. Did you not know, before you went on board the Westernport, that your quadrant, cats, and book were on board? If so, how did you know it?

Ans. Yes. I knew it because several of them told me—the mate and engineer, and others. I went on board and got them.

59th Cross-int. Did not the engineer, or other officers of the Westernport, say that you might search the steamer for your things?

Ans. I don't remember hearing them say so; they told me *they* would search their men and see if they could find anything.

60th Cross-int. Did they search the men? What articles were brought back?

Ans. I don't know whether they searched the men, nor what articles were brought back.

61st Cross-int. Did any of the sailors on board the Island City have a carpet bag? If so, who, and what became of it?

Ans. One of the men named George had one: it was in the cabin when we got aboard—at least, I understood it was the man's bag; it is aboard the ship now; the man went to the hospital in Provincetown.

62d Cross-int. Describe that bag.

Ans. It was a black leather one.

Further cross-interrogatories on behalf of Joseph H. Adams, President, &c.

63d Cross-int. How soon after finding the bark did you proceed with her to Boston?

Ans. We found her on Sunday forenoon, and started for Boston about 11 o'clock the following Friday; we got to Boston about 1 o'clock next morning.

64th Cross-int. Would you not have proceeded much sooner had it not been for the delay caused by the intervention of the Westernport?

Ans. We should; we could have gone right off that same day if we could have had her, provided they would have taken us without a rudder.

65th Cross-int. How were the weather, wind, and sea on the passage from Hyannis to Boston in tow of the Forbes, and did you or not meet with obstruction from ice, or any hindrances other than those incident to ordinary towage.

Ans. We had ice for four or five miles off Hyannis Harbor, broken ice, which stopped us some little, but not a great deal; the weather was fine and pleasant the first part—latter part, a thick fog; the sea was smooth; we met with no other obstruction or hindrance except what I have mentioned.

66th Cross-int. Where was the bark when you found her?

Ans. She was at anchor where we first found her; before the Forbes towed her off, she was hauled into the wharf by the Westernport; I was aboard of her then.

67th Cross-int. Do you know the depth of water in the place where you anchored off Nantucket Light?

Ans. It was about eight fathoms. S. S. SMITH.

Deposition of George Patten, taken on behalf of Claimants aforesaid, Feb. 11, 1857.

1st Interrogatory. Were you a seaman on board the bark Island City on her late voyage from Galveston to Boston?

Ans. I was.

2d Int. Did said bark meet with any, and what disaster on said voyage in or near the Vineyard Sound? If yea, what damage was done to her?

Ans. She met with a disaster there. We lost our anchors, cut away our masts, and lost our rudder.

3d Int. Were you on board the bark, when the Forbes took hold of her to tow her into port?

Ans. I was.

4th Int. When the Forbes left her to go into Provincetown, did you go in her?

Ans. Yes: I went in the Forbes.

5th Int. Whether or not, when you left in the Forbes, had you any intention to return in her to the bark?

Ans. Yes; I intended to return to the bark in the steamboat.

6th Int. Whether or not did you afterwards go out in the steamer Forbes for said bark? If yea, how many times?

Ans. We went once, and returned; and went out a second time and found her. We went out the first time about half way to where we had left her, and returned on account of bad weather. The second time we went to the place where we had left her; did not find her; went into Hyannis, and found her there.

7th Int. When you left the bark in the Forbes, did you leave your chest aboard the bark? If yea, whether or not was it locked?

Ans. I left it aboard: it was locked.

8th Int. Whether or not, when you got into Hyannis in the Forbes, did you go aboard the bark? If yea, did you find your chest, and in what condition? Had anything, and if anything, what, been taken out of it?

Ans. I did go aboard. I found it broken open. There had been a quadrant, a coat, three pairs of socks, a pair of drawers, and a number of small articles, such as sail needles and a palm, and also a white cotton shirt, taken out of the chest when I found it.

9th Int. Whether or not had you any money on board? If yea, how much, and in whose keeping was it?

Ans. I had forty-three dollars aboard, in Capt. Stevens' keeping.

10th Int. Whether or not did you find that money when you went aboard? Did you look or inquire for it?

Ans. I did not find it. I inquired for it as soon as I went aboard.

11th Int. Whether or not did you complain of the loss of this money to the engineer in charge of the bark? How soon after you knew of the loss?

Ans. I did. As soon as I knew of the loss; within an hour after I got aboard.

12th Int. Whether or not was the same, or any of it, returned to you? If yea, how much, when and by whom?

Ans. Twenty-five dollars and a half of it was returned to me, by the mate of the propeller Westernport, in the forenoon of the day we boarded the bark, not more than two hours after we went aboard.

13th Int. Were any other chests or locks in the cabin or forecastle broken to your knowledge?

Ans. There were. There were two chests in the forecastle broken, the mate's trunk was broken open, and the carpenter's chest. The

captain's chest was broken open when I went into the cabin. I couldn't see whether it was broken or unlocked.

14th Int. Did the crew of the bark complain to any one about the chests and locks being broken and things taken? If yea, to whom?

Ans. I heard them make complaint to the mate of the bark, and to the engineers of the steamboat, and also to two of the steamboat's crew who were on board; they said that they would return what things they had.

15th Int. Did you get any of your things back? If yea, what, and when?

Ans. I got back a coat, a pair of drawers, a case of needles, and a quadrant. They came back in the afternoon. The quadrant was returned by the mate of the steamboat, and the clothes by two of the steamboat's crew, one of those who were on board the bark when we boarded her, and one man who was not.

16th Int. What would it cost you to replace what things you did not get back?

Ans. I should think it would cost me eight dollars, besides the money I lost, seventeen dollars and a half.

Cross-interrogatories propounded on behalf of owners and crew of the Westernport.

1st Cross-interrogatory. Why did you leave the bark in the Forbes when she left her?

Ans. On account of being short of provisions was the principal reason. That was what I supposed to be the reason when we were leaving her.

2d Cross-int. How much and what kind of provisions had you on board the bark when you left her?

Ans. We had beef and hard bread. I don't know how much, for I didn't see it.

3d Cross-int. What other kinds of provisions had you on board when you left, and how much?

Ans. We had tea and coffee. I don't how much, I don't know whether there was any other provision on board or not.

4th Cross-int. At what time in the day did you leave the bark?

Ans. I should think between eleven o'clock and noon. I couldn't tell the exact time.

5th Cross-int. What was the state of the weather when you left? Was it very cold? Was ice making around you?

Ans. There was a good deal of ice round; the weather was pretty cold.

6th Cross-int. Did not the Forbes leave the bark because there was so much ice and because the weather was so very cold?

Ans. She did not.

7th Cross-int. Did you see the bark, the first time you attempted to go to her in the Forbes, and why did you not go to her?

Ans. We did not see her. We didn't go because the weather was stormy.

8th Cross-int. On what day did you leave the bark, and on what day did you first attempt to go to her, and on what day did you go to the place where you had left her?

Ans. We left her on Monday, January 26th. We first attempted to go to her on the Wednesday following, and on Saturday we went out to the place where we had left her, and got to that place some time in the forenoon of that day.

9th Cross-int. At what time did you first decide to leave the bark, and how soon did you leave her after you first knew that you were to leave her in the Forbes?

Ans. We first decided to leave the bark on Monday, perhaps fifteen minutes before we left her.

10th Cross-int. Did you find it difficult to get on board the Forbes, and how did you get on board?

Ans. We did not find it difficult. The Forbes came alongside of the bark.

11th Cross-int. Did the Forbes come alongside the bark so that you were able to step from the bark on board the Forbes? If so, explain how she was able to so come alongside the bark.

Ans. She did. She first ran ahead of us a piece, and then backed right alongside of us. We let our anchor go on board the bark, and she backed right alongside. After we brought up the bark with the anchor, the ice was running by us, and the Forbes dropped astern until she lay with her bow right against the bark's stern, and we all went aboard of her.

12th Cross-int. Who left the bark last, to go aboard the Forbes?

Ans. Mr. Smith, I think, the mate of the bark.

13th Cross-int. Was any part of your chest broken when you saw it at Hyannis? If so, what part, and where is your chest now?

Ans. Nothing was broken, except that the catch of the lock was drawn out of the lid. My chest is at Murray's eating house, Commercial street.

14th Cross-int. What articles have you mentioned as taken out of your chest that you have not stated were returned to you?

Ans. I have mentioned all that were returned. There were a white cotton shirt, three pair of socks, a sewing palm, belt, sheath, hammer, and some small things taken out of the till, among which was a jack-knife; these were not returned.

15th Cross-int. Did you see the captain of the steamboat while at Hyannis? If so, did you say to him that you had lost any articles?

Ans. I saw him while there. I did not say to him that I had lost anything. I told the mate of the boat, and the engineers.

16th Cross-Int. Did you tell them that you had lost any other articles except those that were returned to you?

Ans. I did. I told it to the mate of the boat, and to the engineers, and to two of the crew who were on board the bark.

17th Cross-int. Did you say to them what articles you had lost that were not returned? If so, to whom did you so say, and what articles did you mention to them as the articles taken and not returned.

Ans. I didn't mention any article in particular. I told them some of the principal articles. I told the engineers, the day before they left the vessel, that I had lost a shirt and some stockings and some other things. I didn't mention everything.

Further Interrogatory, propounded on behalf of the Claimant, aforesaid.

1st Interrogatory. When you left the bark in the Forbes, how was the bark anchored? With what anchor, and with about how much chain out?

Ans. With a stream anchor, about 800 pounds weight, and about 110 fathom of chain.

Further Cross-interrogatory.

1st Cross-int. Where was the bark at the time you left her? How far from land, and what was the nearest land? Describe her situation as nearly as you can.

Ans. She was off Nantucket, between Nantucket point and Sankoty Head, about two miles from the point. The point was the nearest land, as near as anything.

GEORGE PATTEN.

Deposition of Hiram Wallis, a witness examined on behalf of said Claimant, Feb. 11, 1857.

1st Int. Were you a seaman on board the bark Island City on her late voyage from Galveston to Boston?

Ans. I was.

2d Int. Were you on board the bark when the Forbes took hold of her to tow her into port?

Ans. I was.

3d Int. When the Forbes left her to go into Provincetown, did you go with her?

Ans. I did.

4th Int. Whether or not, when you left the bark in the Forbes, had you any intention to return in her to the bark?

Ans. I had.

5th Int. Whether or not did you afterwards go out in the Forbes for said bark? If yea, how many times?

Ans. I did; twice.

6th Int. When you left the bark in the Forbes, did you leave your chest aboard? If yea, whether or not was it locked?

Ans. I left it aboard. It was locked.

7th Int. Whether or not, when you got into Hyannis in the Forbes did you go aboard the bark? If yea, did you find your chest, and

in what condition? Had anything, and if anything what, been taken out of it?

Ans. I did go aboard the bark then. I found my chest; it was split, broke up. There had been everything taken out, when I found it. I got back a little of it. There were clothes and instrument box and a navigation book taken out. I got back the box and book. The clothes were two pair of pants, a hat, a souwester, under flannels, pairs of drawers; and there was a razor, comb, and looking glass, two cases of sail needles, a shaving box. Those were the things I lost and didn't get back.

9th Int. Were any other chests or locks in the cabin or forecastle broken, to your knowledge?

Ans. Yes; every chest was broken open.

10th Int. Did the crew of the bark complain to any one about the chests and locks being broken and things taken? If yea, to whom?

Ans. I don't know of their doing so. I told the Westernport's crew who were aboard that my chest was broken, and that all hands' chests were broken.

11th Int. Did you get back any of your things? If yea, what, and when?

Ans. I got my book and instrument box, two under flannels and two pair of drawers, a blanket. I got them back on the same Monday that we got back to the bark.

12th Int. What would it cost you to buy the things which you didn't get back?

Ans. About twenty dollars.

13th Int. What countryman are you?

Ans. A Swede.

Cross-Interrogatories, on behalf of owners and crew of the Westernport.

1st Cross-interrogatory. Why did you not take your chest with you when you left the bark in the Forbes?

Ans. I didn't take it because I didn't mean to leave the vessel; I meant to come back again.

2d Cross-int. What articles were taken out of your chest that were not given back to you?

Ans. Two pairs of pants, a hat, souwester, a flannel, a pair of drawers, two cases of sail needles, a razor, comb, looking-glass, and shaving box.

3d Cross-int. Did you see the captain of the Westernport while you were at Hyannis? If so, did you tell him you had lost anything?

Ans. I saw him there. I did not tell him.

his
HIRAM × WALLIS.
mark.

Attest: WM. S. DEXTER.

Second Deposition of Hiram Wallis, examined on behalf of the Claimants, before Wm. S. Dexter, Feb. 20, 1857.

1st Interrogatory. Did you see Emerson's chest when you went aboard the Island City at Hyannis?

Ans. I did.

2d Int. Was it broken, or the lock broken?

Ans. Yes, the lock was broken; the catch was loose.

3d Int. Did you find any of the things belonging to Emerson and Hill? If so, what did yo do with them?

Ans. I found some of them lying round the forecastle; I put them into Emerson's chest, those which belonged to him. I put Hill's things in his bag.

4th Int. Were any of them brought back from the Westernport?

Ans. No, sir.

Cross-interrogatories on behalf of owners and crew of the Westernport.

1st Cross-interrogatory. How many chests were there in the forecastle, and how many of them had locks? Did not the men go to their chests before leaving, and take some of their things? And did you not leave the Island City in haste?

Ans. There were four chests; three had locks. I don't know whether any of them took anything. I did not. We did leave in haste.

his
HIRAM + WALLIS.
mark.

Attest: W. S. DEXTER.

Deposition of William Benedictus, examined on behalf of the Claimant.

1st Interrogatory. Were you a seaman on board the bark Island City, on her late voyage from Galveston to Boston?

Ans. I was aboard of her, as carpenter. I had to do sailor's duty too.

2d Int. Were you on board of the bark when the Forbes took hold of her to take her into port?

Ans. I was.

3d Int. When the Forbes left her to go into Provincetown, did you go with her?

Ans. I did.

4th Int. Whether or not, when you left the bark in the Forbes, had you any intention to return in her to her bark?

Ans. Yes; I intended to return.

5th Int. Whether or not did you afterwards go out in the Forbes for said bark? If yea, how many times?

Ans. I did, twice.

6th Int. When you left the bark in the Forbes, did you leave your chest on board? If yea, whether or not was it locked?

Ans. I did; it was locked.

7th Int. Whether or not, when you got into Hyannis in the Forbes, did you go aboard the bark? If yea, did you find your chest, and in what condition? Had anything, and if anything, what, been taken out of it?

Ans. I did go aboard then; I found my chest with the lock broken, and very near empty; nothing left in it but a mosquito bar and two old shirts, and a few papers. A good deal of clothing had been taken out, and a passport I had. There was a pair of new patent leather gaiter boots, a new hat, eleven shirts, three pair of pants, two under flannels, one pair drawers, two silk pocket handkerchiefs, a black neck tie, two pair of stockings, two towels, a pair of boots, a few sailor's tools and such things, a blue flannel shirt, an English police belt, and my pocket book with a piece of a breast pin in it, a pair of mittens. I don't remember anything else.

8th Int. Did the crew of the bark complain to any one about the chests and locks being broken and things taken? If yea, to whom?

Ans. Yes; they complained to the captain and officers of the bark.

9th Int. Were any other chests or locks in the cabin or forecastle broken, to your knowledge?

Ans. The mate's trunk was broken open, and a chest with some cargo in it. All the men's chests in the forecastle were broken open. There were only four chests in the forecastle.

10th Int. Did you get back any of your things? If yea, what, and when?

Ans. Yes; I got back one pair of boots, one pair of pants, and three shirts, figured ones. I got them back on the same day that we got on board the bark at Hyannis.

11th Int. What would it cost you to replace the things which you didn't get back?

Ans. I think it would cost me forty-five dollars to get them all back. I had been in one ship thirty-three months, going different voyages, and I used to buy a good many small things and put them by. I was second mate of that ship.

12th Int. Did you tell the mate or engineers of the steamer that your things had been taken; if so, how soon after you went aboard the bark?

Ans. I told them so, in fifteen or twenty minutes after I got on board the bark.

13th Int. Did either of the engineers say anything to you about his breaking open any chest or trunk? if yea, what was it?

Ans. One of the engineers told me he had broken open that chest which was like cargo. It was in one of the state rooms in the cabin. He said he broke it open just to satisfy his curiosity. It was the first engineer of the boat who told me.

Cross-interrogatories propounded on the part of owners and crew of the Westernport.

1st Cross-interrogatory. What countryman are you?

Ans. A Norwegian.

2d Cross-int. Why did you leave the bark in the Forbes when she left her?

Ans. We left her, to go into Provincetown for coal and provisions; we meant to come back next morning, but there was no coal for us at Provincetown.

3d Cross-int. Why did not the crew remain aboard the bark and wait until the Forbes came back?

Ans. The steamer parted her hawser, and ran ahead about three quarters of a mile; then she came back alongside of us: we let go our anchor in about seven or eight fathoms of water, and gave her all the chain, making the end fast round the timber head, and we all left. One of the men belonging to the steamboat and I were the last men aboard the bark. When I went aboard the steamboat, I went in the rigging to see if I could see any clear water. I couldn't see any for four or five miles. When the steamboat came back to us, after running ahead, the captain of her and the captain of the bark told us to put on our hats and coats and go aboard the steamboat, because there was not provision aboard the bark, saying that we would be back in the morning if there was coal in Provincetown for us.

4th Cross-int. What caused the steamboat to part her hawser?

Ans. Our vessel took a sheer, and the ice was so strong, and the steamboat had such power going through it, that the hawser broke.

5th Cross-int. How long was it after you left the bark before you got out of the ice with the steamboat?

Ans. I can't tell exactly; about an hour and a half. The ice was sixteen or eighteen inches thick.

6th Cross-int. At what time in the day did you leave the bark, and when did you reach Provincetown?

Ans. We left the bark between eleven and twelve in the forenoon; we reached Provincetown about six or seven o'clock in the evening.

7th Cross-int. How far did you run, after leaving the bark, before you reached Provincetown; and what was the state of the weather, very cold or otherwise?

Ans. I don't know how far it is. We ran straight from the place where we were to Provincetown. The weather was cold and clear.

8th Cross-int. Did you not have bread, beef, and other provisions, on board the bark when you left her?

Ans. We had a barrel of bread, about three parts full, which was full of salt water and snow. We had about half a barrel of beef, and a few pieces of pork. We had water and tea and coffee. That was all. No flour, rice, beans, or anything of the kind.

9th Cross-int. Did you say to the Captain, or any of the officers of

the Westernport, that your clothing or other articles had been taken from your chest and not returned to you? If so, when and to whom did you so say?

Ans. I told the first engineer about it, and told him that I had only got a few pieces back. He promised to look around his boat and see what he could get back. I told him the same day that I got on board at Hyannis.

10th Cross-int. Did you ever complain to the mate, or to any other officer of the Westernport, again, that your things had not been returned?

Ans. I complained to our own mate; I didn't complain to any other officer of the Westernport. I told the engineer about it first, and then after I got back those few things I told him about the other things which I had not got back.

11th Cross-int. Why did you not go to the bark, the first time you attempted to do so after you went into Provincetown?

Ans. We had some of this red ash coal, and it burnt so fast that it would only last a few hours, and pretty heavy weather came on, so we went back. WILLIAM BENEDICTUS.

Deposition of Charles McCarty, examined on behalf of the Claimant.

1st Interrogatory. Were you a seaman on board the bark Island City on her late voyage from Galveston to Boston?

Ans. I was.

2d Int. Were you on board of the bark when the Forbes took hold of her to tow her into port?

Ans. I was.

3d Int. When the Forbes left her to go into Provincetown, did you go with her?

Ans. I did.

4th Int. Whether or not, when you left the bark in the Forbes, had you any intention to return in her to the bark?

Ans. I had.

5th Int. Whether or not did you afterwards go out in the Forbes, for said bark? If yea, how many times?

Ans. I did; twice.

6th Int. When you left the bark, did you leave your chest or bag of clothes on board? If yea, in what place?

Ans. I left my bag in my bunk in the forecastle. I had no chest.

7th Int. When you got into Hyannis in the Forbes, did you go aboard the bark? If yea, did you find your bag and your clothes?

Ans. I did go on board there. I found my bag, but no clothes.

8th Int. Did you tell the mate or engineers of the steamer Westernport, or any of her crew, that your things had been taken? If so, how soon after you went aboard?

Ans. Yes; I told the mate and the crew, both; as soon as I had

got aboard and gone into the forecastle, and seen that everything was broken open and my clothes all gone, and come on deck again.

9th Int. Did you hear the mate, engineers, or crew say anything as to who first went into the forecastle of the bark, or who broke open the chests there, or those in the cabin?

Ans. Yes; the crew told us that the mate first went into the forecastle, and broke open the things, and took what he thought worth taking, and that afterwards the crew followed him. His own crew said that; two of them said so.

10th Int. What were their names?

Ans. I don't know; I didn't hear their names.

11th Int. How many of the seamen of the steamer were on board the bark while you were there at Hyannis? What were their names?

Ans. There were two seamen and the mate, and the engineer and two or three passengers, and one fireman. The mate's name was Mr. Parker. I don't know the names of any of the others.

12th Int. What was the condition of the chests in the forecastle, and the trunks and chest in the cabin and state-room when you went aboard? Were the locks broken?

Ans. The chests in the forecastle were broken open; the nails in the catches of the locks were drawn; the chests were not broken. The trunks and chest in the cabin and state-room were broken open. I can't say whether the locks were broken. I was not in the cabin at the time I went aboard.

13th Int. What things did you lose from your bag? What did you get back? Who brought them back? About what time was it that they were brought back?

Ans. I lost three blue flannel shirts, two pair of drawers, two undershirts, a silk neck-handkerchief, three pair of stockings, a cap. That is all there was in my bag. I got nothing back.

14th Int. What would it cost you to replace what you did not get back?

Ans. The things were not exactly new, but they would answer for me just the same as new, for sea clothes. I think it would cost me over twenty dollars to get new ones.

15th Int. Did you hear the mate of the Westernport say anything about his opening any chests on board the bark?

Ans. I did; he said he went into the cabin and broke open the captain's chest, to look for the bill of lading of the vessel, to see what the vessel was laden with.

16th Int. Did you get leave from the captain to leave the bark at Hyannis? If so, why?

Ans. I did, because I had no clothes. The captain and officers gave me permission, and gave me five dollars to pay my passage round here, because I had no clothes.

Cross-interrogatories on behalf of owners and crew of the Western-port.

1st Cross-interrogatory. Did you make complaint to any of the officers of the Westernport that you had lost your clothes? If so, to whom and when, and what was said in reply to you?

Ans. I made complaint to Mr. Parker, the mate, as soon as I came on board. He told me that some of his men had a little clothes, and that what they had they would give back. He said he knew nothing about them.

2d Cross-int. Did you say anything to him about them afterwards? If so, what did you say and what reply did he make?

Ans. No.

3d Cross-int. On what day did you leave Hyannis, and at what hour in the day?

Ans. I left on Monday, at half past two P. M., in the cars.

4th Cross-int. Did you complain to any of the officers of the bark that you had lost your clothes? If so, to whom, and what was the reply?

Ans. I did; to the mate, and second mate, and captain. They said nothing, except that most of theirs were gone too.

5th Cross-int. How long had you been in the Sound before the Forbes came to you? What had happened to the bark? State anything that you can remember, and the time as nearly as you can.

Ans. I think it was about six or seven days. We had to cut away all our masts before the Forbes came to us. We had nothing to eat, except salt beef. We were lying in the ice a week before the Forbes came to us. We had carried away our rudder in the same gale when we cut away our masts. That gale was on a Sunday night; it was 12½ o'clock when we began to cut away our masts. I think it was eight days before the Forbes came to us. I can't say exactly. We carried away our bowsprit in the same gale.

6th Cross-int. Did any one come to you before the Forbes? If so, who, and what did she do for you? When did she come, and when did she leave you? Why did she leave you?

Ans. A fore and aft schooner came to us before the Forbes, called the Kensington. She towed us about five miles, in the night time. She came to us about half past eight in the evening, about three or four days or a couple of days, after the gale, and about eight days before the Forbes came, but I didn't keep the run of the days, and can't say exactly. She left us about 7 o'clock in the morning of the day after she came. She took hold of us and towed us about five miles through the ice in the night time; then she let go her anchors, and so did we. She stopped by us until daylight. Then she got hold of us again and towed us a little while, until she parted the hawser, and had to leave us because it came on to blow.

7th Cross-int. Were you in the ice from the time the schooner left you until the Forbes came to you? What was the state of the

weather during that time? Did the schooner furnish you with anything?

Ans. We were in the ice during that time. The weather was freezing all the time, and blowing pretty hard some of the time. The schooner did not furnish us with anything. When the schooner took hold of us, we thought we had one anchor down, but when we came to heave in the chain, we found the anchor was gone.

8th Cross-int. What day did the Forbes come to you? How long did she have hold of you? Did she furnish you with anything?

Ans. I don't remember what day of the week it was. She first towed us into Hyannis out of the ice, and we lay there all that night. The next morning she got hold of us again and towed us out abreast of Nantucket Light House. Then she had to leave us, because her coal was nearly gone. She did not furnish us with anything. When she went, we all went in her, because we had nothing to eat on board the bark.

9th Cross-int. Did you ask the Forbes to furnish you with anything to eat, while she had hold of you? If so, what did she furnish you?

Ans. Our officers did. They didn't furnish us with anything that I know of. I heard the captain of the Forbes say that he gave away all his provisions to other vessels. After the Forbes had been to Provincetown she furnished us with provisions.

10th Cross-int. Was the weather very cold when you left the bark, and was it blowing hard? Were you surrounded by ice?

Ans. It was very cold; it was not blowing hard; we were in a field of ice.

11th Cross-int. Why did you not go to the bark, the first time you went out of Provincetown? How far did you go from Provincetown? When did you leave, and when did you return?

Ans. Because the coal was poor, and burnt out too fast, so that it wouldn't last to get to the bark. We went out beyond the Highland Light. We started in the morning and ran about two hours, and then put back.

12th Cross-int. Did you get other coal before you went out a second time? If so, when did you get it, and did you not get good coal the first time?

Ans. We did. A schooner from Boston brought us coal; she got there about twelve o'clock in the day, about two days after we went out the first time; I don't know the day of the week; I don't remember days well. There was no good coal in Provincetown until the schooner came.

13th Cross-int. Did you go out the same day that you got your coal, or not until the next day? Why did you not go the day you got your coal? At what time in the day did you leave Provincetown the last time, and what the day of the week was it?

Ans. We didn't go until next day. We were busy the remainder of that day getting it out of the schooner. We left in the night

about twelve o'clock, the night of the day on which the schooner came. I don't know what day of the week it was.

CHARLES McCARTHY.

The deposition of Isaac McGowan, taken on behalf of the Claimants Feb. 12, 1857.

1st Interrogatory. Were you a seamen on board the bark Island City on her late voyage from Galveston to Boston?

Answer. I was cook.

2d Int. Were you on board of the bark when the Forbes took hold of her to tow her into port?

Ans. I was.

3d Int. When the Forbes left her to go into Provincetown, did you go with her?

Ans. I did.

4th Int. Whether or not, when you left the bark in the Forbes, had you any intention to return in her to the bark?

Ans. I had.

5th Int. Whether or not did you afterwards go out in the Forbes for said bark? If yea, how many times?

Ans. I did; twice. We started once, and didn't get there.

6th Int. When you left the bark, did you leave your chest or bag of clothes on board? If yea, in what place?

Ans. I did; I left my bag in the forecastle.

7th Int. When you got into Hyannis in the Forbes, did you go aboard the bark? If yea, did you find your bag and your clothes?

Ans. I did go aboard; I found the bag but no clothes, except one shirt.

8th Int. Did you tell the mate or engineers of the steamer, or any of her crew, that your things had been taken? If so, how soon after you went aboard?

Ans. I told some of the crew, a quarter or half an hour after I got on board.

9th Int. Did you hear any of the crew of the steamer say anything as to who first went into the forecastle of the bark, or who broke open the chests?

Ans. I did not.

10th Int. What was the condition of the chests in the forecastle when you went aboard the bark? How were the locks?

Ans. They had some of the locks broken off, one chest had the till of it broken.

11th Int. Did you hear the mate of the Westernport say anything about his opening any chests on board the bark?

Ans. I heard him say he had overhauled the captain's chest.

12th Int. What things did you lose from your bag? What did you get back? Who brought them back? About what time were they brought back?

Ans. I lost three or four shirts, three pair of stockings, two pair

of pants. I got one shirt back; one of the crew of the Westernport, who was aboard the bark when we went aboard at Hyannis, brought that back. The two men who were then aboard, said that they were not first in the cabin or the forecastle; that the mate and engineer went there first. I got back the shirt in the afternoon of the day we went aboard—Sunday.

13th Int. Did you tell the mate or engineers of the steamer that you had not got all your clothes back?

Ans. I told the engineer.

14th Int. Did the two men give any reason why they took the things?

Ans. They said they didn't suppose anybody was coming back near her again, so they took what suited them.

15th Int. Please read your answer to the 9th interrogatory, and see if the question was correctly understood by you.

Ans. It was not. I don't know anything about who broke open the chests. I heard the two men who were aboard the bark at Hyannis, say that the mate and engineer boarded her first, and went first into the cabin and forecastle, and that when they went into the forecastle themselves, it was full of clothes, kicking around.

Cross-interrogatories propounded on behalf of the owners and crew of the Westernport.

1st Cross-int. When did you complain that you had lost your clothes? Did you mention it to any of the officers of the Wstern-port? If so, to whom, and when did you mention it to them? How long did you remain in Hyannis?

Ans. I mentioned it to the engineer, a day or two after I got aboard the bark. I did not mention it to any other officer of the steamboat. I can't say exactly how many days I stayed at Hyannis; four or five, I think.

2d Cross-int. Do you know the names of the men who spoke to you about the mate and engineer going into the cabin and forecastle, or what they were called? Were they the men who were on board the bark when you first went on board?

Ans. I do not know their names, or what they were called. They were the same who were on board when we got to Hyannis.

3d Cross-int. What provisions had you on board the bark when you left her? Did you have beef, hard bread, pork, tea and coffee?

Ans. We had provision for about one or two meals. We had half a barrel of beef, about fifty cakes of hard bread, damaged by water, six or seven pieces of pork; we had tea and coffee.

4th Cross-int. Did you have flour? Mention the other articles of provision which you had.

Ans. No; we had nothing except what I have mentioned; no butter, flour, or sugar.

Further Interrogatory propounded on behalf of the Claimants.

1st Int. What would it cost you to replace the articles which you didn't get back?

Ans. I don't think I should get them short of twenty dollars.

his
ISAAC × McGOWAN.
mark.

Attest: W. S. DEXTER.

Deposition of John Williams, taken on behalf of the Claimants, Feb. 12, 1857.

1st Int. Were you a seaman on board the bark Island City on her late voyage from Galveston to Boston?

Ans. I was.

2d Int. Were you on board of the bark when the Forbes took hold of her to tow her into port?

Ans. I was.

3d Int. When the Forbes left her to go into Provincetown, did you go with her?

Ans. I did.

4th Int. Whether or not, when you left the bark in the Forbes, had you any intention to return in her to the bark?

Ans. I had.

5th Int. Whether or not did you afterwards go out in the Forbes for said bark? If yea, how many times?

Ans. I did; we went twice after her.

6th Int. When you left the bark, did you leave your chest or bag of clothes on board? If yea, in what place?

Ans. Yes; I left my bag in my berth in the forcastle.

7th Int. When you got into Hyannis in the Forbes, did you go aboard the bark? If yea, did you find your bag, and clothes?

Ans. I went aboard there; I found my bag, but nothing in it.

8th Int. Did you tell the mate or engineers of the steamer, or any of her crew, that your things had been taken? If so, how soon after you went on board?

Ans. I asked the two men who were on board when we got to Hyannis; a little while after I got aboard, and had been down in the forecastle and found my clothes gone; I didn't say anything to the mate or engineers about it.

9th Int. Did you hear any of the crew of the steamer say anything as to who first went into the forecastle of the bark, or who broke open the chests?

Ans. All that I heard was, that these two men said that the mate was the first in the forecastle, that the mate and engineers went down first. They said that the chests were broken open when they got down there themselves.

10th Int. What was the condition of the chests in the forecastle when you went aboard the bark? How were the locks?

Ans. When I saw them, the locks were broken open and pretty much everything was out of them.

11th Int. Did you hear the mate of the Westernport say anything about his opening any chests on board the bark?

Ans. I did not.

12th Int. What things did you lose from your bag? What did you get back? Who brought them back, and about what time were they brought back?

Ans. Two pair of drawers, three under shirts, two blue shirts, one pair pants; those I lost altogether. I also lost and afterwards got back two under shirts, and two pair of pants. The two men brought them back from the steamer with other things belonging to the other men, about three hours after we went aboard the bark.

13th Int. Did you tell the mate or engineers of the steamer that you had not got your clothes back?

Ans. No; I made no complaint to the mate or engineers. I told the men so; they said it was all they got.

14th Int. What would it cost you to buy the articles which you did not get back?

Ans. I suppose they were worth about thirteen or fourteen dollars.

Cross-interrogatories on behalf of owners and crew of the Westernport.

1st Cross-interrogatory. Do you know the names of the men whom you found on board the bark, to whom you said that you had lost your clothes?

Ans. I do not.

2d Cross-int. Why did you not tell the captain or officers of the Westernport that your clothing had not been returned to you?

Ans. I didn't think it was of any use to tell them.

His
JOHN × WILLIAMS.
Mark.

Attest, W. S. DEXTER.

Deposition of Jerry Emerson, taken on behalf of the Claimants aforesaid, before William S. Dexter, Commissioner, Feb. 20, 1857.

1st Interrogatory. Were you a seaman on board the Island City on her late voyage from Galveston to Boston?

Answer. I was.

2d Int. Did you leave her and go in the steamer Forbes to Provincetown?

Ans. I did.

3d Int. When you left in the Forbes, did you understand that she was going back to the bark—and how soon?

Ans. I understood that she was going back the next day.

4th Int. Did you go back to the bark in the Forbes? If not, why not?

Ans. I did not. I was unable; my hand was crippled by an injury and the cold.

5th Int. When you left her, what things did you leave aboard, and what were they in?

Ans. I left in my chest four white shirts, two under flannels, two pair of stockings, a crape vest, a satin vest pattern which I had bought in the East Indies, two dozen sail needles, and a marling-spike. My chest was in the forecastle.

6th Int. In whose care did you leave them?

Ans. When I found that I could not go back myself, I got Hiram Wallis, one of my shipmates, to take charge of them.

7th Int. Did you ever try to get your things back?

Ans. I wasn't there myself to try to get them back.

8th Int. To whom did you go for them?

Ans. I went to the man to whom I had given them in charge.

9th Int. What things did you not get back?

Ans. None of the articles I have named. There were also in my chest a pair of drawers, an account book, and a sewing-box; those things I got back. They were left in the chest.

10th Int. What would it cost you to replace the things you lost?

Ans. About eighteen dollars would replace what I lost.

11th Int. Was your chest locked when you left it? Who had the key?

Ans. It was locked. I had the key myself; when the steamer went back to the bark, I gave it to Wallis.

Cross-Interrogatories on behalf of owners and crew of the Western port.

1st Cross-interrogatory. How many men had you in the forecastle, and how many chests were there in the forecastle, and to whom did they belong?

Ans. We had eight men in the forecastle. There were four chests—belonging one to Johnny, another to Patten, another to Hiram Wallis, and the other to me. I don't know the other name of "Johnny."

2d Cross-int. State the value of each article that you say you lost.

Ans. The shirts were worth $1.75 each; the flannels, $1.25 each; the crape vest cost me $4.50; the vest pattern cost me $1.75; the needles cost 85 cents; the marling-spike, 50 cents.

3d Cross-int. When did you first go aboard the Island City after leaving her in the Forbes? Where did you find your chest?

Ans. I have not been on board of her since. My chest was brought up to my boarding house by Hiram Wallis.

4th Cross-int. When you left the bark, what clothing did you take with you? Did not all the men go into the forecastle before leav-

ing, and take some of their clothing with them? State what each man took, so far as you can.

Ans. I took a coat, a pair of pants, a gray over shirt, an under shirt, a pair of drawers, a pair of stockings, a pair of shoes and a hat. I had all these things on. I took nothing else. Some of the men went into the forecastle before leaving and got some things. I don't know what any one took; I was very busy at the time.

5th Cross-int. Did you go into the forecastle just before leaving the bark? If so, did you not open your chest?

Ans. I did go in; I was the last to come out; I did not open my chest?

6th Cross-int. Have you been told by any one to make out a list of all clothing lost by you, and you would get pay for it, or words to that effect? If so, by whom?

Ans. No, I have not. The captain told me this morning to make a list of all the clothing I lost aboard the vessel. He said nothing else.

7th Cross-int. Did not the captain tell you you would get your pay for it, or words to that effect?

Ans. He said that if they recovered anything I would get paid for it.

JARY A. EMMERSON.

Deposition of Thomas Hill, examined on behalf of Claimants, before Wm. S. Dexter, Feb. 20, 1857.

1st Interrogatory. Were you a seaman on board the Island City on her late voyage from Galveston to Boston?

Answer. I was.

2d Int. Did you leave her and go in the steamer Forbes to Provincetown?

Ans. I did.

3d Int. When you left in the Forbes, did you understand that she was going back to the bark—and how soon?

Ans. I understood that she was going back next day.

4th Int. Did you go back to the bark in the Forbes? If not, why not?

Ans. I did not; I had an attack of the piles, and had to go to the hospital at Provincetown.

5th Int. When you left her, did you leave your things aboard? In what were they put?

Ans. I did leave them, in a bag and a carpet-bag.

6th Int. Did you ask anybody to take care of them for you?

Ans. I did; I asked the carpenter to take care of them, Benedictus. The cook and two or three others offered to take care of them.

7th Int. Did you get back any of your things?

Ans. I did.

8th Int. Who gave them back to you?

Ans. Jerry Emerson.

9th Int. What did you lose, and what would it cost you to buy them?

Ans. I lost three flannel shirts, which cost me $1.50 each; one cotton shirt, cost 81 cents; three pair of socks, cost 50 cents a pair; a suit of oil-clothes, cost $2.50 or $3, I don't remember which; a pair of shoes, cost $1.75; a carpet bag, cost 1.50; a portfolio, cost $1, I think; I lost an album, cost $2.75; a gold pen, cost $1. There were also some trifles of no great value. I lost a box of water colors, cost $2.25. I believe that was all. I got none of these things back.

Cross-interrogatories.

1st Cross-interrogatory. In what were the articles which you say you lost? Describe the carpet-bag you lost, and mention the articles in it. Was there any other carpet-bag in the forcastle?

Answer. They were in a bag and a carpet-bag; it was a black bag, made of some kind of cloth glazed—such as is commonly called a carpet-bag. In it were the portfolio, the album, the water colors, and the gold pen. That was all there was in it, except one vest, which I got back. I don't know of any other carpet-bag in the forecastle.

2d Cross-int. Have you been on board the Island City since you left her? How did you get the articles from on board of her which you say were returned to you?

Ans. I have not been aboard of her since. Emerson put them with his—my bag lashed on to his chest—and I got them from him.

3d Cross-int. How many of your crew remained at Provincetown when the Forbes left, and how many went in the Forbes?

Ans. Two of us that belonged before the mast staid at Provincetown—six went out in the Forbes, I suppose. We left six aboard of her when we went ashore, but I don't know whether they all went out in her.

4th Cross-int. Have you been told by any one to make out a list of the articles lost by you, and you would get pay for them? If so, by whom?

Ans. I have been told that it would be better to make out a list. I have been told that others of the crew got paid for them. The carpenter and Herman told me so.

5th Cross-int. Has Capt. Stevens, or any other person except the carpenter and Herman, told you that you would get pay for your things, or words to that effect? If so, whom?

Ans. I don't think Capt. Stevens has said anything to me about it. One of the crew, called Johnny, told me he understood that one of them had got paid. I don't know of any one else having mentioned it at all.

THOS. HILL.

Deposition of Wm. H. Matthews, taken on behalf of the Claimants, March 5th, 1857.

1st Interrogatory. Were you on board the bark Island City on her late voyage from Galveston to Boston? If yea, in what capacity?

Answer. I was, as second mate.

2d Int. Where was said bark on the twenty-first of January last, and what chains, anchors, and boats, had she? How did she lay at that time?

Ans. We were then lying at an anchor in the Vineyard Sound—somewhere near the Horse Shoe, and the buoy on the Handkerchief. We had, altogether, about one hundred and five or one hundred and ten fathoms of chain, and two boats—one turned up on deck. The vessel was dragging a very little, I thought. We supposed that we had the best bower down; we had two small anchors on deck, one of about seven hundred pounds, and a small kedge.

3d Int. Whether or not did the schooner Kensington come to said bark? if yea, on what day, and at what time of the day? How was the weather at that time?

Ans. She did come to her; I don't remember the day of the week—I didn't take notice particularly. We saw her along through the day, and towards night she got to us. She got along very slowly, because there was much ice, and very little wind; the weather was calm when the schooner got to us.

4th Int. Did you discover that your anchors were gone? If yea, when, and what did you then do?

Ans. We didn't find that they were gone until the schooner came alongside; we then manned the windlass and hove up our chain, and some on board the Kensington, I think the captain, asked me how much chain I thought there was out. I told him I supposed there was about thirty or thirty-five fathoms out. As I spoke, the end of the chain dropped over the windlass; I told him the anchor was gone; we had all thought the anchor was on the chain, until then; then we run a hawser to the schooner as soon as possible. The schooner's boat was alongside, and took the end of it to the schooner; we also run a small line out to her, on the other bow; she towed us all night, until about daylight in the morning. Then something gave way on board the schooner, and the hawser dropped overboard; we held on with the other line until it parted; it was then thick and snowing, and blowing pretty hard; after that, the schooner stood away a little, and then tacked and came back again across our stern, and asked the captain if he would leave the vessel; he said no; the captain of the schooner said it was coming on to blow, and he must try to get in, and that he would return as soon as he possibly could, and assist us all that lay in his power; the schooner then left us.

When we found the anchor gone, we got the end of the chain out again, and got out our small stream anchor, from under the topgal-

lant forecastle, and got it on top; then we got it over the bow, hung it to the cathead, and got the end of the chain up to the anchor, but it didn't have a shackle that would take the ring, so we bent it into the ring, with a fisherman's bend, and stopped the end of it back; then we let it run, and in the meantime, the carpenter had shackled the remaining part of the other chain to this one; so that it made about 105 to 110 fathoms altogether.

5th Int. How long did it take you to shackle your chains and bend on your stream anchor?

Ans. About half or three-quarters of an hour. I can't say exactly.

6th Int. How was the weather, when the schooner took you in tow, and during the time she was towing you?

Ans. It was quite moderate at first, but kept breezing up to a gale of wind; it finally blew a good strong one, before she got away from us.

7th Int. How long, after she left you, did you lie at anchor where she left you? Did the bark drag at all, during that time?

Ans. Three or four days, I don't remember which—drifting somewhat, at first; she stopped drifting and laid still afterwards, after she had the full scope of her chain.

8th Int. Did the schooner afterwards return to you?

Ans. She did not.

9th Int. Whether or not, did the steamer Forbes come to the bark and take her in tow, on the twenty-fourth January last, some time in the afternoon?

Ans. She did.

10th Int. Whether or not, after towing her some time, did the Forbes leave her at anchor? If yea, state with what anchor and chains, and in what way the chain was secured. Who secured it?

Ans. The Forbes did so leave her; she left her anchored with the stream anchor and the starboard chain, the only chain we had. The end of the chain was fast to the topsail sheet bits, forward of the stump of the foremast. I made it fast myself. I hove the end of it round the bitt, and made it fast with two half hitches, and seized the end of it down to its own part.

11th Int. Did the Forbes, after anchoring the bark, leave her? If so, for what purpose?

Ans. She did leave her, for coal and provisions.

12th Int. Did you leave the bark and go in the Forbes to Provincetown?

Ans. I did.

13th Int. When you left in the Forbes, did you understand that she was going to return to the bark? If so, how soon?

Ans. I understood that she was coming right back again as soon as she could get coal; that was our intention.

14th Int. When you left the bark, did you take any, and what articles of clothing, with you?

Ans. I took a pair of pants, an oil coat, and a souwester, and a couple of shirts, that's all I took of my own. I carried in my bosom two small boxes containing a pair of pistols and a masonic apron of the mate's.

15th Int. Did you go back in the Forbes, to the bark? at what time did you leave Provincetown, and on what day? on what day, and at what time of day did you reach the place where the Forbes had left her at anchor?

Ans. I did go back in the Forbes; we left Provincetown about one o'clock Friday night; we reached the place where we had left her, about eleven o'clock Saturday morning.

16th Int. How were the wind, and sea, during that night?

Ans. It blew very hard, and there was a pretty nasty sea in the Sound.

17th Int. Where, and in what, did you leave your things when you left the bark, to go in the Forbes?

Ans. In a clothes bag, at the head of my berth—most of them. The rest were on a shelf over my berth.

18th Int. Did you afterwards go into Hyannis, and go on board the bark? How soon, after you got in there? State the condition of things on board.

Ans. I did go into Hyannis and go aboard the bark; the Forbes run alongside the bark, but they refused to take a line, or let any body on board, saying that they didn't want anybody alongside. We got aboard shortly afterwards, telling them that we had personal property on board and would like to look after it; then they let us come aboard; I went down in the cabin first—found the Westernport's officers sitting there enjoying themselves; I went into my room, and didn't find anything belonging to me; I asked the engineer about it; he said he knew nothing about them; that he would see if any of the steamboat's crew had got anything belonging to me, and would try to return it if he could. I never had anything returned. There was a state room broken open, and a trunk with cargo in it, which was in a spare state room. That was broken open, and the officers of the Westernport were engaged, when we got aboard, in cracking nuts which they had got out of the trunk.

19th Int. Did you afterwards recover your things, or any of them—and how?

Ans. No, I never recovered any of them. There was a hole cut through the bulkhead of my room into the between decks. I asked the engineer what that was done for: he said, they did it to see what the vessel was loaded with, and he said that if we hadn't come aboard that day, it was his intention to cut into the cabin floor to see what was below. I asked him what he wanted to do that for, and he said, just merely to satisfy his curiosity; I told him, then, that I supposed it was to satisfy their curiosity that they had plundered the vessel, and broken open whatever they could, and taken what was movable. He said, no, that he hadn't troubled anything, and didn't know that

any of his men had; he said that if there had been a chest or a trunk locked and he wanted to see what was inside, the lock wouldn't stop him, for he would open that just as quick as he would anything else.

20th Int. State the articles you lost. What would it cost you to replace them?

Ans. I lost a suit of shore clothes—black coat, pants, and vest, a pair of boots, half a dozen calico shirts, seven or eight white shirts, four blue flannel shirts, three or four pair of flannel drawers, and stockings, and other small things; I couldn't tell how many there were of each; I suppose it would cost me all of fifty dollars to replace what I lost.

21st Int. Did you complain to any one that the things had been taken?

Ans. I did complain that my things had been taken; I told the mate of the bark and the captain of the Westernport, and the engineers; the captain replied that that sort of little pilfering would be done, and he couldn't help it.

22d Int. Were you short of small stores and provisions on board the bark? In what condition was your bread?

Ans. We were short of small stores and provisions. Our bread was wet—what little there was.

23d Int. Where do you belong?

Ans. To Eastport, Maine.

24th Int. Did you see the condition of the men's trunks in the forecastle? If so, what was it?

Ans. I saw them. They were broken open, and there were considerable clothes scattered round the floor.

Cross-interrogatories propounded on behalf of the owners and crew of the Schooner Kensington.

1st Cross-int. Had the bark a rudder or spars when the schooner reached her? What was the size of her boats? Were they sufficient to have saved you, with the wind and sea that came up that night, and the ice?

Ans. She had no rudder or spars. The boats were two quarter boats. I don't think they would have been sufficient to carry us ashore that night; they would have been chawed up in the ice.

2d Cross-int. Was the bark, at the time she was reached by the Kensington, in a perilous condition, and surrounded by shoals? How far from the Horse Shoe? How did it bear from you?

Ans. I should say she was; I don't know how far off the Horse Shoe was, or how it bore.

3d Cross-int. Did the bark remain where the schooner left her, until the Forbes took you? Did you drift at all during that time, except while the chain was paying out? Was there a gale in the meanwhile?

Ans. We did drift a little, before we gave her the whole scope of

the chain. After we gave her all the chain, she didn't drift any. It was blowing hard when the schooner left us; it didn't blow any to speak of when the Forbes came to us.

4th Cross-int. Whether or not, was there danger of your running into the schooner while she was towing you?

Ans. I should say there was.

5th Cross-int. What would have become of the bark and those on board, but for the assistance rendered by the Kensington? Would she, or not, have gone upon the Horse Shoe?

Ans. The bark would have gone ashore if the ice had started; I don't know what would have become of the crew. I can't say whether she would have gone on the Horse Shoe. I am not much acquainted in the Vineyard Sound.

6th Cross-int. Would you have discovered the loss of your anchor before heaving up? would you have hove up on the chain before you began to drift—or even then?

Ans. I don't know that we should.

7th Cross-int. How was the anchorage when the schooner left you? Whether or not, was it a better and safer place than that where she found you?

Ans. I couldn't say how the bottom was. We held well. I don't know whether it was better or safer than the place where she found us. I am very little acquainted in the Vineyard Sound. We were more under the north shore there, and therefore safer.

8th Cross-int. What was the condition of the officers and crew of the bark, when the schooner reached you, and how were you then supplied with provisions and oil?

Ans. The mate had sore hands; the rest of the officers and crew were pretty well. We were out of provisions and oil; we had tea and coffee, a little bread which was wet, and a little meal—small things.

9th Cross-int. Will you state, particularly, how long you were bending on the stream anchor and getting the cable ready?

Ans. As near as I could say, it was half or three-quarters of an hour. I can't say exactly.

10th Cross-int. Have you said, and have you heard the captain and officers, or any of them, of the bark, say that the bark would have been lost, and the lives of all on board, but for the schooner Kensington and those in her?

Ans. I have heard the remark passed, but I don't know who said it; I don't know but I may have said it myself; I don't know that I heard the captain say that—I have heard him say that he hoped the owners of the schooner would be paid for their trouble, for he thought she had done us more good than anybody. I think myself, that if the schooner had not come to us, we must have gone ashore, by the way it blew next morning at daylight.

11th Cross-int. Was or not, the schooner, her cargo and crew, in

danger from the ice and weather while coming to your rescue, and while aiding and towing you in?

Ans. Yes; I should say they were.

12th Cross-int. Did you hear anything said by Capt. Gray, when he left you, about telegraphing to Boston? If so, what?

Ans. I think he said, he would telegraph to Boston, as soon as he got in.

Cross-Interrogatories propounded on behalf of Joseph H. Adams, President, &c.

13th Cross-int. How were the weather, wind, and sea, when the Forbes first took the Island City in tow, as you have stated?

Ans. The weather was clear; it was blowing quite a breeze, I don't remember from what quarter; there was not much sea, but a great deal of ice.

14th Cross-int. Did it continue so during said towage?

Ans. No: it came up so thick that we couldn't see; not a great deal of wind; the sea and ice continued about the same during the towage.

15th Cross-int. Whether or not, did you experience any difficulty from the ice, during such towage? If any, what?

Ans. There was some difficulty, because of the ice; we ran into the Forbes once, on account of her fetching up against the solid ice.

16th Cross-int. Did such collision occur more than once? If so, how often during such towage?

Ans. We ran into her once or twice, perhaps three times; I didn't notice particularly, how often we came against her.

17th Cross-int. What occasioned the collisions?

Ans. On account of the Forbes fetching up against the solid ice, and because there were only two men on board the bark who were used to steering while being towed with a hawser.

18th Cross-int. Was there more or less ice, and was the obstruction therefrom greater or less, and with more or less danger of collision, than when you were in tow of the schooner?

Ans. There was more ice, and a great deal more solid, and there was more danger of collision, than when we were in tow of the schooner.

19th Cross-int. Did you or not meet with any other accident or hindrance while so in tow of the Forbes?

Ans. Yes; we both got ashore.

20th Cross-int. For whom were the provisions wanted which you have stated that the Forbes went into Provincetown to procure?

Ans. For the Forbes and for the bark; chiefly for the bark.

21st Cross-int. Had the Forbes already furnished provisions to the Island City?

Ans. She had.

22d Cross-int. Did the Forbes make any attempt to reach the bark

from Provincetown, previous to the one you have spoken of, as commenced about one o'clock Friday night?

Ans. She did; she mustered what coal she could get in Provincetown, and went down as far as the Highland Lights, but finding the coal bad and burning up so fast that she would be unable to do anything for the bark, even if she got to her, she came back.

23d Cross-int. What did the Forbes then do?

Ans. She went back into Provincetown harbor, and came to an anchor.

24th Cross-int. Why did she not proceed to the bark before Friday night?

Ans. Because she had no coal, and couldn't get any in Provincetown. The morning after we anchored, the captain of the Forbes having some little coal left, he says, says he, "I might as well be doing some good, so I'll go break the ice in the harbor a little." So we was going about the harbor, breaking the ice a little, when we saw a schooner coming round the point and supposed her to be the one with coal. We ran out towards her and found that it was a vessel with coal for the Forbes; the captain of the Forbes spoke him, and he told him in reply, that he had some sixty ton of coal for him, from Boston; he told him that he would go alongside of him and take it aboard, right straight off. The schooner came to an anchor, and we ran right alongside of her with the Forbes. We went right to work with the Forbes' crew and the bark's crew—and by that night at dark, we had all the coal aboard; then we left the schooner and came to an anchor that night, about twelve or one o'clock, the Forbes started for the bark.

Cross-interrogatories, propounded on behalf of owners and crew of the Westernport.

25th Cross-int. What was the weight of the stream anchor of the bark?

Ans. I couldn't say exactly; I should say between 700 and 800.

26th Cross-int. Describe the place where you came to anchor when the schooner left you.

Ans. I can't tell about that, because I'm not at all acquainted in the Vineyard; I hardly know one port from another there.

27th Cross-int. What day and hour did the schooner reach you?

Ans I can't tell the day; I think it was between ten and eleven at night, when she got to us.

28th Cross-int. What day and hour did she leave you?

Ans. She left us about daylight, next morning.

29th Cross-int. Did she give you any provisions?

Ans. No, sir.

30th Cross-int. What day and hour did the Forbes reach you? How soon after the schooner left you?

Ans. I couldn't say whether it was three or four days after; it was some time in the afternoon; I couldn't tell the day or the hour.

30½ Cross-int. How did the Forbes take you in tow?

Ans. She gave us her hawser.

31st Cross-int. How long did she tow you?

Ans. Until about twelve o'clock that night, when we both touched on a shoal.

32d Cross-int. What then took place?

Ans. We both lay quiet about a half an hour—there was no sea nor anything to disturb us. Then the Forbes started ahead again and carried us off; she towed us on then, until we both got as near Hyannis as we could—until the Forbes ran against the solid ice; then we were just outside the harbor of Hyannis; the ice was so solid that we couldn't get into the harbor. We lay there at an anchor until about daylight, in the morning—we found we couldn't get in there, and Capt. Morris said he thought he could get us to Provincetown. We got up our anchor and started about daylight, and she towed us along until about half past eleven or twelve o'clock. Then she parted her hawser; then she went ahead a little way, and then worked round through the ice and came back again; we thought she was going to give us the end of her hawser again, and prepared ourselves on the forecastle to receive it. She came alongside, and finally dropped astern—Capt. Stevens came on board, he had been on board the Forbes, and told me and the mate that the Forbes would have to leave us, as she was out of coal, and had no provisions to spare us beyond what she had given us. She had given us small stores and bread since she first come to us. Then Capt. Morris came aboard, and told us to stand by to come to an anchor; we came to anchor, and paid out all the chain we had, some 105 or 110 fathom, and made the end of it fast to the topsail sheet bitts, forward of the stump of the foremast, with two half hitches, and seized the end down to its own part. Then I went aft, and as I went aft, the captain said to me ["I'm not going to take any of my own things, and I wouldn't take any if I was you, except an oil coat and souwester, in case it would come on to a rain."] (That part in brackets, objected to by Mr. Dana.) I went down into the cabin then with the mate, took my oil coat and other things, as I have stated before, and went aboard the Forbes.

33d Cross-int. At what day and hour did you leave the bark?

Ans. It was a little before twelve o'clock, noon; but I couldn't tell the day; I didn't keep any particular run of the days.

34th Cross-int. What day and hour did the Forbes leave the bark?

Ans. She left in ten or fifteen minutes after I went aboard of her.

35th Cross-int. Did you leave the bark riding at her stream anchor only?

Ans. Yes.

36th Cross-int. Was she surrounded with ice when you left her.

Ans. She was—with drift ice; no solid ice, to speak of.

37th Cross-int. How far was she from Hyannis when you left her?

Ans. I couldn't say how far it was. We were somewhere off Nantucket Point. That was the nearest to us. The Point was in sight—it may have been fifteen miles off—but I couldn't say exactly.

38th Cross-int. When you left her, was there any open sea to be seen from her decks?

Ans. There were open spaces to be seen, from one quarter a mile to three-quarters of a mile wide, among the drift ice.

39th Cross-int. I mean, clear open sea.

Ans. I couldn't say. I didn't look out to see if there was any open sea ahead of us. I only noticed these vacant spots which I have mentioned.

40th Cross-int. Was there any clear open sea to be seen from the Forbes' mast-head, when she left the bark?

Ans. I don't know.

41st Cross-int. When did you leave Galveston, and where were you bound?

Ans. I don't know the day we left. We were bound to Boston. We were about fifty-seven days from the time we left Galveston until we got into the Vineyard Sound.

42d Cross-int. Did you ask the schooner to give you provisions?

Ans. Yes.

43d Cross-int. Why did she not?

Ans. Because she had none.

44th Cross-int. Did you leave any beef or pork on board of the bark?

Ans. We left perhaps a dozen or a dozen and a half pieces of beef in the harness cask—and I think one or two pieces of pork.

45th Cross-int. Is that all the beef and pork you left in her?

Ans. I believe that was all. I didn't overhaul it to see how much there was.

46th Cross-int. Can you swear there was no barrel or half barrel of either?

Ans. No, I would not—because I didn't go and look and overhaul it; therefore I wouldn't swear to it.

47th Cross-int. Did you leave no bread, tea, coffee, rice, or beans and peas in her?

Ans. We left some bread, not much; some tea and coffee; a little rice, two or three pounds; no beans or peas, that I know of.

48th Cross-int. Did you put any provisions on board the Forbes from the bark?

Ans. No.

49th Cross-int. How much water did you leave on board the bark?

Ans. Nearly a cask, in the booby hatch—and there may have been some little in some of the other casks; that was all.

50th Cross-int. How many hours were you in reaching Provincetown?

Ans. We got in there early in the evening, after taking a light-

boat in tow, which was in distress. We towed her in with us, and got into harbor about seven or eight o'clock, I should think.

51st Cross-int. How long and how far did you tow the light-boat?

Ans. We towed her from about two or three in the afternoon until we got in; I couldn't say how far it was.

52d Cross-int. If the Forbes could have kept on towing the bark, without obstruction from ice, and without accident, how long would it have taken to get you into Provincetown?

Ans. She would have got us into Provincetown that night, easy enough, if the ice hadn't bothered her.

53d Cross-Int. What day and hour did the Forbes first leave Provincetown?

Ans. I think it was the day after we got there; it was about seven or eight o'clock in the morning.

54th Cross-int. What did you do on that trip, and when did you return to Provincetown?

Ans. We went down as far as the Highland Lights, and then found that we wouldn't have more than coal enough to get to the bark and back, and that if she bothered us any in the ice we shouldn't have coal enough to do anything; so we came back, and got back the same night. I don't know the hour; I was asleep below when we got back.

55th Cross-int. Did the Forbes take in any fresh stock of coal before sailing on this first trip?

Ans. We took in all we could get in Provincetown; there wasn't a great deal; I don't know how much; it was all small white ash coal—stove coal.

56th Cross-int. If she could have taken the bark back to Provincetown, without obstruction from ice or heavy weather, on the first trip from Provincetown, would her coal have been sufficient?

Ans. I think it would; if we had known that we should have no obstruction from ice, we might have gone; but it was risky to go and bother with it, and moreover it was coming on to blow a gale of wind.

57th Cross-int. When did the Forbes start a second time from Provincetown?

Ans. We got in Monday night; Tuesday we stayed in the harbor, getting aboard the coal and water, and an anchor; Wednesday morning, before daylight, we started on our first trip. In my previous answers I had missed a day, and wish now to correct them in that respect. We got back from our first trip on Wednesday night; Thursday we laid in Provincetown; and on Friday took in our coal from the schooner, and started again for the bark at twelve o'clock Friday night.

58th Cross-int. Did it blow a gale on Wednesday afternoon and night?

Ans. Yes, it blew pretty strong.

59th Cross-int. The reason why the Forbes gave up on the first

trip, and returned to Provincetown, was because she thought her coal might not [hold] out, with all the obstructions from ice, and the gale that was coming on; was it so?

Ans. It was.

60th Cross-int. Do you think the Forbes did her best to get you into port, when she had you in tow?

Ans. Yes, I do.

61st Cross-int. Do you think the state of things as respects the obstructions from ice and the threatening weather, justified her and you in leaving the bark for the time—to return as soon as she could?

Ans. I don't think there was anything that forced her to leave, except want of coal and provisions; I know that if we had any provision, neither the captain, nor the mate, nor I, would have left her. I don't know about the rest, because I never asked them.

62d Cross-int. Do you mean that you had not coal and provisions enough to have lasted through the day?

Ans. We had enough coal and provisions to go to Provincetown with the Forbes alone, but not enough to tow the bark with her.

63d Cross-int. Do you mean to say that if you had had clear sea and good weather, you had not coal enough to get the bark to Provincetown?

Ans. If we had been clear of ice, we could have towed the bark to Provincetown; she didn't tow any heavier than the light-boat. Where we took the light-boat there was no ice; it was clear water.

64th Cross-int. Then what you mean is that she had not coal enough to get her through in that state of the ice?

Ans. Yes.

65th Cross-int. Do you mean that the bark and Forbes together had not provisions enough to last through the day?

Ans. They had enough to last through the day; the Forbes had no more to spare than what she had given us; they were short.

66th Cross-int. How long would your provisions have lasted you, economically used—both vessels being together?

Ans. I suppose it might have lasted a couple of days or so.

67th Cross-int. What caused the Forbes' hawser to part, when she gave up towing you?

Ans. The hawser was parted by the ice; the Forbes ran into the solid ice, and the bark took a sheer and snapped the hawser.

68th Cross-int. You do not mean that none of your crew recovered any of their property, do you?

Ans. Some of them recovered some little. I know I never recovered any of mine. A bundle of clothes was brought by the Westernport's boat and thrown on our deck, all mixed up together, and the men picked out what they could find. Some got a shirt or two, and some a pair of trowsers, and so on.

His
WM. H. ⋈ MATTHEWS.
Mark.

Attest: W. S. DEXTER.

This cause was thence continued from term to term to this present term, when the court here (to wit, May 19th) pronounced the following decree:—

This cause came on to be heard at the last October Term of this court, A. D. 1858, and it appearing to the court that two other causes in admiralty were depending in this court wherein salvage is claimed against the said bark Island City, her tackle, apparel, furniture, and cargo, for services rendered thereto in the same peril or growing out of the same (to wit, one libel in favor of *John Norris et als.* and William C. Norton and als. intervening—being the owners, master, officers, and crew of the schooner Kensington, and the other libel in favor of the Steamboat Relief Company, by Joseph H. Adams, Agent, owners of the steamboat R. B. Forbes, against the same respondents). All the said causes were, in accordance with the prayer of the respondents, heard *together*, and were severally argued by their respective counsel. The same were thence continued, under advisement, to this present term; and now after mature deliberation thereon had and upon consideration thereof, It is *ordered, adjudged, and decreed*, by the court here, that the whole amount of all the salvage services rendered by the libellants in all said causes amounts to the sum of thirteen thousand dollars, of which sum, three thousand and three hundred dollars belong to the owners, master, officers, and crew of the schooner Kensington aforesaid, pursuant to a decree now pronounced in said cause; and five thousand two hundred dollars belong to the owners of said steamer "R. B. Forbes," pursuant to a decree now pronounced in that cause; and that the residue, to wit, four thousand five hundred dollars, is the whole amount of salvage services rendered in the premises by the libellants in this cause; and that Henry B. Cromwell, William Cromwell, and Joseph Noble, owners of said steamboat Westernport, do recover against said bark Island City, her tackle, apparel, and furniture, and all and singular the goods, wares, merchandise, and cargo on board of said bark at the time of salvage, one-third part of said sum, namely, fifteen hundred dollars, as and for their salvage, together with their costs of court taxed at

And it is further ordered, adjudged, and decreed, that the other two-third parts thereof, to which the master, officers, and crew of the said steamboat Westernport would otherwise have been entitled, be and the same are hereby decreed forfeit to the owners of said bark Island City, her tackle, apparel, furniture, and cargo, by reason of the misconduct of the said master, officers, and crew; and that this libel, so far as said master, officers, and crew are concerned, be and the same is hereby dismissed without costs.

From which decree the said libellants (June 10th, 1859) in open court, do claim an appeal as follows, to wit:—

The above named libellants conceiving themselves aggrieved by the final decree entered on the nineteenth day of May, 1859, in the

above entitled cause, do hereby appeal therefrom to the Supreme Court of the United States, next to be holden at Washington, on the first Monday of December, 1859, and they pray that this their appeal may be allowed. D. W. GOOCH,
Proctor for Libellants.

Whereupon the said appeal is allowed by the court; and said libellants give good and sufficient security that they will prosecute their appeal with effect, and answer all damages and costs if they shall fail to make the same good; which security is approved by the court.

A true record.

Attest. H. W. FULLER, Clerk.

United States of America, Massachusetts District, *ss.*

I, Henry W. Fuller, Clerk of the Circuit Court of the United States for the first Circuit, Massachusetts District, do hereby certify that the foregoing is a true copy of the record and of all proceedings in the cause of Henry B. Cromwell, William Cromwell, and Joseph Noble, owners of the American steamboat "Westernport," of New York, and P. S. Berry, master of said steamboat, for themselves, and the officers, and crew of said steamboat, and others entitled to salvage against the bark Island City, of Boston, her tackle, apparel, furniture, and cargo; and against all persons intervening for their interest therein in this court (including all the evidence used at the hearing of said cause).

In testimony whereof I have hereunto subscribed my name and affixed the seal of said Court, at Boston, in said District, this seventh day of December in the year of our Lord one thousand eight hundred and fifty-nine, and of the Independence of the United States the eighty-fourth.

[SEAL.] H. W. FULLER, Clerk.

N. B. You shall not, except by consent of the parties in writing, permit either party to attend at the taking of the deposition, either himself, or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponent whilst giving his deposition in answer to the interrogatories annexed to this commission. And you shall take such deposition in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponent and yourself, and such disinterested person (if any) as you may think fit to appoint as clerk, to assist you in reducing the deposition to writing. And you shall put the several interrogatories and cross-interrogatories to the deponent in their order, and take the answer of the deponent to each, fully and clearly. ☞ Depositions to be taken on paper of like size with this commission.

United States of America, the Circuit Court of the United States, within and for the Massachusetts District.

[SEAL.] To William S. Dexter, of Boston, in said district, a Commissioner of the Circuit Court of the United States, greeting:—

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and

empower you to take the answers [to the interrogatories hereunto annexed] of John R. Rowe, a witness to be examined on behalf of the claimants, and to be used in a certain cause now pending by appeal in the Supreme Court of the United States, wherein Henry B. Cromwell & al., plaintiffs, *versus* the barque Island City and Cargo, defendant.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses, as aforesaid, to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence. And the same, so taken and subscribed, to return, togegether with this commission and your doings herein inclosed, sealed and directed to the Supreme Court of the United States, holden at Washington, as soon as the same may be executed.

In testimony whereof we have caused the seal of the said Circuit Court to be hereunto affixed.

Witness, the Honorable Roger B. Taney, at Boston, this twelfth day of December, in the year of our Lord one thousand eight hundred and fifty-nine. H. W. FULLER, Clerk.

To the Honorable the Justices of the Supreme Court of the United States, holden at Washington:—

I, William S. Dexter, the commissioner named in the within commission, to me directed and issued out of the Circuit Court of the United States within and for the Massachusetts District, do certify unto your honors that, acting under and by virtue of the authority to me given in and by the said commission, I did, on the nineteenth day of December, in the year of our Lord one thousand eight hundred and fifty-nine, said day having been by me appointed for that purpose, cause to be brought before me John R. Rowe, the witness within named, and the said witness having been by me first carefully cautioned and sworn to testify the truth, the whole truth, and nothing but the truth touching the matter wherein his deposition was then to be taken, I did examine him carefully on oath while present before me in answer to the interrogatories and cross-interrogatories to said commission annexed. And the examination of said witness so taken as aforesaid, I did then reduce to writing, and carefully read over the same to the said witness, and then caused the same to be subscribed by the said witness in my presence. And said examination, subscribed as aforesaid, is by me hereunto annexed and herewith returned.

And I do further certify unto your honors, that I did not permit either party to the cause within mentioned, to attend at the taking of said deposition, either him or themselves, or by any attorney or agent, or to communicate in anywise with the said deponent, whilst giving his said deposition as aforesaid. And I took said deposition

in a place separate and apart from all other persons, and permitted no person to be present during said examination, except the deponent and myself. And I did put the several interrogatories and cross-interrogatories, hereto annexed, to the said deponent in their order, and did take and reduce to writing, fully and clearly, the answer of the said deponent to each of them.

And I do further certify unto your honors, that the said deposition so taken as aforesaid, was taken on behalf of the claimants in said cause, and to be used therein, and that I have in taking, reducing to writing, and making return of the same, acted in all respects by virtue of and in conformity to the said commission.

And, therefore, I do make return unto your honors of the said commission, and of my doings therein, and of said deposition.

Witness my hand and seal, at Boston, in said district, this nineteenth day of December aforesaid.

WM. S. DEXTER, [SEAL.]
Commissioner of the Circuit Court of the United States, for the First Circuit within and for the Massachusetts District.

Deponent's fees, $ 1 50.
Commissioner's fees, 15 00.

United States Circuit Court, Massachusetts District.

HENRY B. CROMWELL & al., Libellants, Appellant,
vs.
THE BARQUE ISLAND CITY AND CARGO.

Interrogatories in behalf of the Claimants, to be propounded to John R. Rowe.

1st. What is your name, age, residence, and occupation; where were you in January, 1857, and how employed?

2d. Please state whether or not there were to your knowledge, any steamboats at Tarpaulin Cove in January, 1857, and if any, what?

3d. Please state whether or not any of the officers or crew of any such steamboats, and if any, of which, were in your office, or whether you had communication with them, and if yea, how often while said steamboats lay at Tarpaulin Cove?

4th. State whether or not any telegraphic despatches were received by you during that time in regard to the barque Island City and the steamer "R. B. Forbes," or either of them; and if yea, what were they?

5th. Please state when or between what dates such messages, if any, were received at Tarpaulin Cove.

6th. Please state whether the last of such messages, if any, was received before or after the steamer Westernport left Tarpaulin Cove, and if before, how long before.

7th. Please state whether or not any inquiry was made of you by any of the officers or crew of the Westernport, and whether any in-

formation was given by you to them or any of them, in regard to the Island City and the steamer R. B. Forbes, or about the messages received at your office.

8th. Please state whether these messages, if any, were private messages or in the nature of general news, and whether or not you communicated to any person or persons, and if yea, to whom?

WM. DEHON, Proctor.

United States Circuit Court, Massachusetts District.

Cross-interrogatories in behalf of Libellants to be propounded to John R. Rowe.

1st. If you answer the fourth direct interrogatory in the affirmative, and state what the despatches were, state also whether you have given the words of the despatches, or only stated the substance of them from recollection.

2d. If you have answered that you communicated any despatches to the officers of the Westernport, or any of them, state to whom you communicated them, and what you communicated.

3d. Annex true copies of all the despatches, if any, which you say you communicated to the officers of the Westernport, or any of them, with the day and hour of the reception of the same by you.

D. W. GOOCH, Proctor.

The Deposition of John R. Rowe, in answer to the interrogatories and cross-interrogatories annexed.

1. In answer to the first interrogatory, this deponent saith. My name is John R. Rowe; my age, twenty-two last July; my residence, Boston; my occupation, telegraph operator. In January, 1857, I was at Wood's Hole, Massachusetts, until January 20th. From January 20th until April 1st, 1857, I was at Tarpaulin Cove, Naushon Island. I was employed as the telegraph operator at those places during said times, in the employ of the Cape Cod Telegraph Company.

2. To the second, he saith. At the time I was there, there were three: the H. B. Beach, the Totten, and the Westernport.

3. To the third, he saith. The officers of each of the boats were ashore. Some of them were ashore and in my office about every day while they laid there. The captain of the H. B. Beach and the captain and engineer of the Westernport were in my office every day, sometimes two or three times a day while the steamboats laid there. The captain of the Totten not quite so often. I talked with all of them freely, whenever they came in.

4. To the fourth, he saith. I did receive several such despatches during that time, between the 23d and the 31st of January. I cannot give the precise dates of each. The first message that I remember to have received in regard to the barque, or the R. B. Forbes, was from Hyannis, that the R. B. Forbes had made fast to the barque

Island City, in the Sound. The next one was that the barque and the Forbes were drifting with the ice in the sound. The next was from Provincetown, that the Forbes was in that harbor, taking in coal, and would leave immediately for the barque Island City, which was off Great Point. The next was from Provincetown, that the Forbes had started for the barque. The next was from Provincetown, that the Forbes had returned to Provincetown harbor, and was waiting for coal from Boston, on receipt of which she would leave again for the barque.

That is all I remember relating directly to the barque or the Forbes.

5. To the fifth, he saith. They were all received between the twenty-third and thirty-first of January, A. D. 1857. I cannot fix the exact dates more nearly.

6. To the sixth, he saith. The last one which I have mentioned was received the evening before the Westernport left the Cove. She left early the next morning.

7. To the seventh, he saith. There were inquiries made of me, about those messages, by the captain and the engineer of the Westernport at several different times, and I communicated the messages to them. At the time I received the last message which I have mentioned, the engineer of the Westernport was in my office, and standing by me as I wrote it out. He read it as I wrote it out, and I then read it aloud to him and others who were in the office. Captain Berry, of the Westernport, and Captain Scudder, of the H. B. Beach, were in the office, and heard the message read by me. There were several other persons present, belonging to different vessels in the harbor.

8. To the eighth, he saith. The messages I have mentioned were in the nature of general news. I communicated them freely to every one whom I met, or who happened to be in the office. There were other messages, of a private nature, received during the same time, which I communicated only to the persons to whom they were directed.

1 ×. In answer to the first cross-interrogatory, this deponent saith. I have stated the substance of them from recollection. I cannot now give the exact words. When I communicated them, I gave the exact words.

2 ×. To the second, he saith. I communicated to Captain Berry, of the Westernport, and to the engineer of the Westernport, whose name I think is Bergen, to Captain Scudder, of the H. B. Beach, and to many others, all the messages about the Island City and the R. B. Forbes which I have mentioned. The last one received by me, as I have mentioned in answer to the fourth direct interrogatory, was read by the engineer of the Westernport, and I also read it aloud in his presence and that of Captain Berry.

3 ×. To the third, he saith. I cannot annex copies of the des-

patches, as I kept no copy of any of them. I left that office in April, 1857, and have not been there since. There may be copies at the office, but I think not, as copies of general news despatches are not usually preserved more than a day or two. I have already stated that I cannot give the precise dates of the reception of any of them, but I am certain that they were all received between the twenty-third and thirty-first of January, A. D. 1857.

JOHN R. ROWE.

Endorsed. No. 305. Deposi'n of John R. Rowe, in behalf of claim'ts. Filed 11 Jan'y, 1860.

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SUPREME COURT OF THE UNITED STATES.

No. 306.

FERDINAND N. CLARK, APP'T,

vs.

WILLIAM H. Y. HACKETT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW HAMPSHIRE.

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THE UNITED STATES OF AMERICA,
District of New Hampshire, ss.

At a circuit court of the United States, begun and held at Portsmouth, within and for the district of New Hampshire.

Present, Hon. Nathan Clifford, and Hon. Matthew Harvey, judges of said court.

FERDINAND N. CLARK
vs.
WILLIAM H. Y. HACKETT.

Ferdinand N. Clark brings his bill in equity against William H. Y. Hackett, and files the same on the thirteenth day of June, A. D. 1857, as follows:

To the Honorable the Judges of the Circuit Court of the United States of America, within and for the district of New Hampshire:

Ferdinand N. Clark, of the city of Roxbury, in the State of Massachusetts, and a citizen of the said State of Massachusetts, brings this bill of complaint against William H. Y. Hackett, of Portsmouth, in the State of New Hampshire, counsellor at law, and a citizen of the said State of New Hampshire. Humbly complaining, showeth unto your honorable court, that on the twenty-eighth day of January, A. D. eighteen hundred and forty-three, that your orator filed his petition in the district court of the United States of America, within and for the district of New Hampshire, in which said district and State of New Hampshire your orator then had his residence, to be declared a bankrupt, and on the twenty-second day of March, A. D. eighteen hundred and forty-three, your orator was by said district court declared a bankrupt, and on the seventeenth day of December, A. D. eighteen hundred and forty-four, your orator was by said district court decreed a full and perfect discharge of and from all his debts, owing by him in his private right and capacity at the time of presenting his petition to be decreed a bankrupt. On the twenty-second day of March, A. D. eighteen hundred and forty-three, said district court appointed one John Palmer, of South Hampton, in said State of New Hampshire, assignee. On the fourteenth day of March, A. D. eighteen hundred and forty-five, said district court decreed a license to said John Palmer, assignee as aforesaid, to sell the assets of your orator within six months thereafter, by giving public notice in some newspaper, or by posting up notices; and the said John Palmer, after giving the notice required by the said district court, on the ninth day of April, A. D.

eighteen hundred and forty-five, sold at public auction all the assets of your orator, the said bankrupt, to one R. M. Clark, for the sum of two dollars, and then and there executed to said R. M. Clark a formal and sufficient bill of sale to said R. M. Clark, conveying to the said R. M. Clark a good and perfect title, in and to all the assets sold as aforesaid, a true copy whereof is hereto annexed, marked Exhibit No. 1.

And on the tenth day of April, A. D. eighteen hundred and forty-five, your orator purchased of the said R. M. Clark, for a good and valuable consideration, all the assets sold by said assignee as aforesaid, and the said R. M. Clark then and there executed a formal and sufficient bill of sale of said assets to your orator, a true copy whereof is hereunto annexed, marked Exhibit No. 2.

And your orator further showeth to this honorable court, that among the asssets so purchased by him was a certain claim against the republic of Mexico, which claim was a claim for the seizure of the cargo of the schooner Louisiana, on or about September, A. D. eighteen hundred and twenty-five, which claim your orator was, on or about the fifteenth day of April, A. D. eighteen hundred and fifty-one, awarded, by a board of commissioners duly appointed and authorized to settle the claims of American citizens against the republic of Mexico, under the treaty of the second day of February, A. D. eighteen hundred and forty-eight, and an act of the Congress of the United States passed third day of March, A. D. eigheen hundred and forty-nine, the sum of eighty-six thousand seven hundred eighty-six dollars and twenty-nine cents, payable from the Treasury of the United States of America, on the fifteenth day of May, A. D. eighteen hundred and fifty-one. And your orator further showeth to your honorable court, that one Benjamin C. Clark, of Boston, Suffolk county, in the Commonwealth of Massachusetts, a citizen of the said State of Massachusetts, then and now a debtor to your orator, did, on the fifteenth day of May, A. D. eighteen hundred and fifty-one, petition by bill, the honorable the circuit court of the United States, within and for the District of Columbia, for an injunction directing the Secretary of the United States Treasury not to pay the said award to your orator or his agents, servants, &c., but to retain the same until the further order of said circuit court, the said B. C. Clark falsely claiming to be a creditor of your orator, by force and virtue of a certain pretended judgment rendered against your orator, on the twenty-fourth day of June, A. D. eighteen hundred and forty-two, (signed twenty-ninth day of June, A. D. eighteen hundred forty-two,) by the consideration of the justices of the superior court, within and for the city and State of New York, and in favor of said Benjamin C. Clark, for the sum of

twenty-five thousand four hundred and fifty-three dollars and twenty-eight cents. And your orator avers, that the said judgment was obtained by fraud and collusion, and therefore is void in law, as hereinafter set forth. And in his said bill, the said B. C. Clark prayed that the said John Palmer, assignee, or such other assignee as might be duly appointed by the said district court for New Hampshire, might have leave to come in and make himself the party complainant in said cause.

And your orator further showeth to this honorable court, that one Charles G. Nazro, then and now a copartner of said Benjamin C. Clark, of the city of Boston, in the county of Suffolk and State of Massachusetts, a citizen of said Massachusetts, falsely pretending that the said B. C. Clark and said Nazro were creditors of your orator's estate in bankruptcy, on the nineteenth day of May, A. D. eighteen hundred and fifty-one, petitioned the honorable the district court of the United States, within and for the district of New Hampshire, sitting in bankruptcy, for the appointment of an assignee of the bankrupt estate of your orator, instead of the said John Palmer, whom said Nazro represented to said district court had deceased, and prayed that one William H. Y. Hackett, or some other person, be appointed assignee as aforesaid, the said Nazro falsely representing at the same time that the said John Palmer had left assets unsold and dues uncollected, belonging to your orator's estate in bankruptcy, and averring that recent occurrences had given value to some of the said assets; and thereupon, on the day and year last aforesaid, the said district court decreed that the said William H. Y. Hackett be appointed assignee for the purposes prayed in the petition of said Charles G. Nazro. And your orator further says, that said William H. Y. Hackett did, on the second day of June, A. D. eighteen hundred and fifty-one, petition by bill the United States circuit court of the District of Columbia, and in said bill, the said Hackett claiming to be such assignee as aforesaid, and duly qualified to act, prayed leave to come in under the prayer of the said original bill filed by said B. C. Clark as aforesaid, and to be made the complainant in the said cause; and that as such assignee, by reason of divers matters and things falsely alleged therein, was entitled to have and receive the whole of the said sum so awarded as aforesaid to your orator, and to distribute the same under the direction of the said district court of New Hampshire, sitting in bankruptcy; and the said Hackett was accordingly admitted as such complainant in the said cause, and thereafter prosecuted the same as such assignee, seeking, as set forth in his said bill, that the Secretary of the Treasury be enjoined from paying your orator, and all other persons than himself, as such assignee, from receiving any portion of the money so awarded

to your orator as aforesaid. And afterwards, such proceedings were had in said suit, so prosecuted by said Hackett in said circuit court of the District of Columbia, that the said court, on or about the twenty-eighth day of March, A. D. eighteen hundred and fifty-three, did decree that the amount of the award aforesaid be paid by the Secretary of the Treasury aforesaid to the said William H. Y. Hackett, assignee as aforesaid, to be by him, under the decree and orders of the district court of the district of New Hampshire, distributed to your orator's creditors in bankruptcy, to wit, to such persons as were creditors of your orator January the twenty-eighth, A. D. eighteen hundred and forty-three.

And your orator further says, that he appealed from the judgment of the said circuit court of the District of Columbia to the Supreme Court of the United States, sitting at Washington, in the said District of Columbia, and that such proceedings were had in said Supreme Court that the judgment of the said circuit court was affirmed. And your orator further showeth to this honorable court, that, in accordance with the decree of the said circuit court of the District of Columbia, the said honorable the district court of the district of New Hampshire received from the Secretary of the Treasury of the United States the amount of said award, less twenty per cent. allowed Major F. T. Lally and James S. Thayer, the agents who prosecuted the said claim against the republic of Mexico before the board of commissioners aforesaid.

And your orator further says, that the said district court of New Hampshire, as he has reason to believe, and does believe, received the amount of the said award, and now holds the same in custody, in accordance with the decree of the said circuit court of the District of Columbia, affirmed as aforesaid; and your orator further says, and gives this honorable court to be informed, that he did not, on the said twenty-eighth day of January, A. D. eighteen hundred and forty-three, owe said Benjamin C. Clark and Charles G. Nazro, copartners, or either of them, nine hundred and seventy dollars and twenty-six cents, or any debt whatever.

And that your orator avers that he did not, at the time of filing his petition to be declared a bankrupt, or at any other time since, owe the said Benjamin C. Clark the amount of the judgment, or any part thereof, set forth and described in the said Benjamin C. Clark's bill presented to the circuit court of the District of Columbia; but, on the contrary, as your orator avers and is ready to prove, said judgment was obtained, as hereinafter set forth, in the name of said Benjamin C. Clark, by fraud and collusion. And your orator says, that the said Charles G. Nazro and Benjamin C. Clark, as copartners, and the said

Benjamin C. Clark individually, were, on the said twenty-eighth day of January, A. D. eighteen hundred and forty-three, debtors in a large amount to your orator's estate in bankruptcy, and were so described in your orator's schedule of assets.

And your orator further says, that he denies that the late John Palmer, assignee as aforesaid, left unsold any of the bankrupt's assets, or left any dues belonging to said estate uncollected, or left any of the proceedings in bankruptcy unfinished and pending at the time of his decease; but, on the contrary, your orator avers that the said John Palmer, assignee as aforesaid, finished, closed, and ended all the business matters and things pertaining to said bankrupt's estate on the ninth day of April, A. D. eighteen hundred and forty-five. And your orator further showeth, that the said William H. Y. Hackett was not authorized by the decree of any court to proceed against or set aside the doings of the said John Palmer, assignee in bankruptcy aforesaid. And your orator in this behalf avers, that the said William H. Y. Hackett, in his said proceedings, did violate and exceed the authority of the court; and having been deceived by representations falsely made to him by the said B. C. Clark and other persons to your orator unknown, did misrepresent the facts in relation to the proceedings in bankruptcy to the said circuit court of the District of Columbia, and said Supreme Court of the United States; and by which false representation, and by the collusion and fraud of the solicitor and counsel of your orator, both of said courts, not knowing the real facts and proofs in the premises, but supposing they had by the said Hackett been truly presented and exhibited to the court, was induced, by reason of said false and fraudulent representation and exhibits, to decree, and did decree, that the amount of said award should be paid to the said Hackett, assignee as aforesaid, and for the purposes aforesaid; all of which your orator is ready to verify and prove, in the manner and at the time this honorable court shall direct.

And your orator further avers, that at the time of your orator's said petition in bankruptcy, and long before, to wit, ever since the month of September, A. D. eighteen hundred and twenty-five, when the said cargo was captured by a Mexican national vessel of war, and was condemned by a Mexican republic court of admiralty, as appears by authenticated proceedings on the files of the board of commissioners in the city of Washington, in the District of Columbia; (said board of commissioners were appointed as such by an act of the Congress of the United States, of the third day of March, A. D. eighteen hundred and forty-nine, to settle the claims of American citizens against the Mexican republic; the said condemnation, among other things, alleged that the said schooner intended illicit trade with the

Mexican republic, having sailed from the port of Havana in the island of Cuba, an enemies' port, and engaged in war, and claimed that said schooner and cargo were captured within the waters of Mexican republic's jurisdiction, &c., as aforesaid.)

And also, when the late John Palmer, assignee as aforesaid, sold the assets as aforesaid, on the ninth day of April, A. D. eighteen hundred and forty-five, at public auction, that the claim against the republic of Mexico, awarded to your orator as aforesaid, was and had been considered by your orator, and by all persons that had a knowledge of the nature of said claim, worthless and of no value at all, and it was also so considered by said John Palmer; and said claim had been abandoned from September, A. D. eighteen hundred and twenty-five, until February, A. D. eighteen hundred and forty-two, together with the said claim for the schooner Louisiana, which was owned in part or whole by her former master, Michael Dougherty, of the city, county, and State of New York, and then and now a citizen of the State of New York. And your orator further avers, that the agents who prosecuted other similar claims declared to your orator, before said claim was awarded, and a long time after said claim had been sold to said R. M. Clark, that all similar claims had been rejected by the board of commissioners who were authorized to settle such claims.

And your orator further says he can and will prove to the satisfaction of this honorable court, that the claim for the seizure of the cargo of the schooner Louisiana aforesaid, against the republic of Mexico, was not only considered valueless by well informed judges, but its recovery impossible; and your orator avers that such representation was believed by your orator, and that but for certain public events and occurrences which happened favorable to the allowance of said claim many years after the said claim was sold by the late John Palmer, assignee, to R. M. Clark aforesaid, such as the late war with Mexico and the treaty of Guadalupe Hidalgo, and other material matters, &c., &c., and but for the great and skilful effort thereafter made by your orator, the said claim would and could not have been allowed by the board of commissioners aforesaid, and in consideration thereof, and for the skill or services of your orator, and of the large amounts of money and time he spent in and about the matter, and of the services of his friends, whose aid and efficient management was of great service in the premises, (and for which services they have not as yet received any compensation,) your orator claims and maintains that he is justly and equitably entitled to the whole amount of said award now remaining in the custody of the said district court for the district of New Hampshire, with damages and costs. And your orator further says, that the

said Ferdinand Clark, mentioned in the bills of said Benjamin C. Clark and William H. Y. Hackett, and in the bankrupt proceedings before mentioned, and the said Ferdinand N. Clark mentioned in this bill, are one and the same person. And your orator further showeth and gives this honorable court to be informed touching the judgment aforesaid, purporting to be in favor of the said Benjamin C. Clark, and rendered by the consideration of the superior court of the city of New York, in the State of New York, and dated June twenty-fourth, and signed twenty-ninth day of June, A. D. eighteen hundred and forty-two, for the sum of damages and costs herein before set forth, that said judgment was obtained through and by fraud and collusion—that is to say, your orator, after the commencement of said suit, and a resonable time before the same was reached for trial, retained and employed one Joseph Hopkins Stewart, of the city of New York, and then and now a citizen of the State of New York, then an attorney and counsellor at law, and duly licensed to practise in said superior court, and paid the said Stewart his reasonable fees to attend to, manage, and defend said suit for and in behalf of your orator. And your orator then and there fully and plainly instructed the said Stewart in the nature and defence of said suit, and directed him in the conduct and management thereof as follows, to wit: First, that the foundation of said suit, no specification of claim therein having ever been filed or declared on in the said suit, was groundless and fictitious; that no good and sufficient cause of action existed. Second, that if any cause of action was or should be set forth in said case, or if any cause of action ever existed in said B. C. Clark's hands against your orator, that the same had been cancelled and annulled by payment and satisfaction in full, so that your orator was not then, nor has ever been since, indebted to the said Benjamin C. Clark; on the contrary, the said Benjamin C. Clark was then largely indebted to your orator, and your orator avers that had the said Joseph Hopkins Stewart been faithful and true to your orator's interest the fact of said Benjamin C. Clark's indebtedness to your orator would have been made to appear in the trial of said case. Third, your orator further says that he then and there put into the said Stewart's hands divers evidences of indebtedness from the said B. C Clark to your orator, to be used in further defence to the claims of B. C. Clark in said action, either as payment or by set off in said action, or if the same were not in any way to be shown in payment, or pleaded in set-off in defence of said action, then by bringing a proper action or actions upon the claims of your orator against the said B. C. Clark, in such way and manner as that the sum might be put into judgment against said B. C. Clark, and such judgment set off against or in satisfaction of

such judgment, if any, as said B. C. Clark should recover in such action against your orator, and among other of such claims were divers claims against the said B. C. Clark, as the party liable for the payment of divers sums of money due to your orator for divers lots of coffee shipped by your orator from Havana, by order and request of said B. C. Clark, to one John Clark of Boston, in the State of Massachusetts, and citizen of said State of Massachusetts, then at New Orleans, to wit, between the month of February, A. D. eighteen hundred and thirty, and the month of March, A. D. eighteen hundred and thirty, and interest on the original prices of said coffee, in all amounting at the time of said action against your orator to the sum of eighteen thousand one hundred and seventy-six dollars fifty-five cents.

And among such claims of your orator against said B. C. Clark, then placed in the hands of the said Stewart, to be used as aforesaid, was a claim for a certain sum of money had and received by said B. C. Clark, on or about December twenty-eighth, eighteen hundred and thirty-seven, from one John Preston, of said Boston, to the use of your orator, which the said B. C. Clark, at the last named date, specifically agreed to appropriate and pay for your orator's benefit and behoof, but did not so appropriate and pay, as he was in conscience bound to have done, and which said sum, together with interest, on the twenty-fourth day of June, A. D. eighteen hundred and forty-two, and interest to June twenty-fourth, eighteen hundred and forty-two, amounting to thirty-eight hundred and eight dollars and fifty cents.

And for the further information of your honors your orator has hereto annexed a statement, marked Exhibit No. 4, of divers claims and demands of your orator upon and against said B. C. Clark, and of the said B. C. Clark's indebtedness to your orator up to the said fourteenth day of May, A. D. eighteen hundred and fifty-one, to which he craves leave to refer, principal and interest amounting to two hundred and fifty-five thousand nine hundred and forty-three dollars and sixty-two cents.

And all the said claims and demands having been so communicated by your orator as aforesaid to said Stewart as his said attorney, to be so used in defence or set off to said action, or in set off upon judgments to be obtained thereon, to the judgment, if any, which the said B. C. Clark should in said action recover against your orator, the said Stewart, as such attorney of your orator, agreed and undertook to use the same as aforesaid; and the said Stewart instructed your orator that the same could be properly so used and made available to your orator as aforesaid, for the purposes aforesaid, in connection with the said suit of B. C. Clark in said superior court of New York against your orator as aforesaid, but the said Stewart, well knowing the premises, fraudulently, wilfully, and collusively neglected his duty in that behalf

to your orator. And your orator further says, that notwithstanding said Joseph Hopkins Stewart was as to the several matters of defence thus specifically and fully, and in due and sufficient season, instructed and directed in the premises, and that said Stewart well knew that your orator was always ready and willing to aid and assist the said Stewart in the said defence, when he, the said Stewart, should call on him for aid and assistance in said cause, or in procuring evidence of such claims of your orator; yet the said Stewart, well knowing all and singular the premises, and notwithstanding he was employed and paid by your orator, yet the said Stewart fraudulently colluded and conspired with the said Benjamin C. Clark, and the counsel of said Benjamin C. Clark, and said John Clark, the brother of Benjamin C. Clark aforesaid, and in pursuance of such fraud and collusion designedly, fraudulently, wilfully, and maliciously abandoned the interest of your orator, and so managed and conducted said suit as that your orator was defaulted, and judgment rendered as aforesaid, greatly to the damage and injury of your orator. And your orator further says that he was entirely ignorant of the fraud and collusion, and of the rendition of said judgment against himself, until after the final rendition thereof, and too late to obtain his just and legal rights, and get a new hearing in the case before the said superior court of New York city, and subsequently thereto your orator, by reason of his poverty and bankruptcy, and discharge in bankruptcy, as aforesaid, which discharge barred all claims, whether real or pretended, against your orator, including the said judgment so fraudulently obtained as aforesaid, did not take any measures to procure the same to be set aside by reason of said fraud. And your orator further says, and offers as an apology, and as a reason why your orator did not plead the several matters and things herein before set forth and alleged relating to the fraudulent and collusive proceedings in obtaining the judgment rendered by the said superior court of New York city in answer to the bill of the said Benjamin C. Clark and William H. Y. Hackett, filed and heard by the said circuit court of the United States for the District of Columbia, that your orator was fraudulently instructed by his counsel engaged in said case last aforesaid, and that he, relying upon them, verily believed that the bankrupt proceedings, and the acts of the said John Palmer, assignee aforesaid, and the said bill of sale executed by the said John Palmer, as conveying the title to the Mexican claim aforesaid, and your orator's discharge in bankruptcy, would form and make a perfect and complete bar to the matter and things by the said Benjamin C. Clark and said William H. Y. Hackett in their respective bills pleaded, so that whether this judgment aforesaid was valid or not, or

whether it existed or not, was of no consequence to your orator, as his discharge would be a good and sufficient and complete bar to the same.

And your orator further shows unto this court, that at about the time the award aforesaid was made by the said board of commissioners aforesaid, awarding your orator the amount of his claim against the republic of Mexico, one Charles H. Dougherty, of the city, county and State of New York, and a citizen of said State of New York, made claim, by letter of the twenty-eighth day of April, A. D. eighteen hundred and fifty-one, herewith annexed, marked Exhibit No. 3, on your orator for ten per cent. on the amount of the said award, which ten per cent. amounted to eight thousand six hundred and seventy-eight dollars and ninety-two cents, and this amount the said Charles H. Dougherty claimed that he was entitled to for services, which he, the said Charles H. Dougherty, had rendered your orator in getting said Mexican claim allowed; but your orator thought otherwise, and was not aware that said Charles H. Dougherty had rendered any benefit and services to your orator in the matter, or was ever employed by your orator so to do, and therefore your orator justly refused to allow said Charles H. Dougherty his pretended claim, or any part thereof. And your orator further says, that the said Michael Dougherty, on or about the first day of May, A. D. eighteen hundred and fifty-one, being at said Boston, claimed one-quarter part of said award in addition to his son Charles H. Dougherty's aforesaid ten per cent., and said if your orator did not comply with their demands aforesaid, he, said Michael, would tie it all up in Washington city, District of Columbia, and that your orator would not get any part of said award. And your orator further says, as he is informed and verily believes, solely for the reason that your orator would not allow said Charles H. Dougherty and said Michael Dougherty their claims as aforesaid, they, said Charles H. Dougherty and said Michael Dougherty, and the said Joseph Hopkins Stewart, and one John L. Hayes, of the city of Washington, in the District of Columbia, attorney at law, afterwards the counsel of your orator, and the said William H. Y. Hackett, intending and combining to defraud your orator out of his just and equitable dues and rights, and deprive him of the benefits of said award, conspired and confederated together, and as means for the final consummation of their designs, caused the said proceedings in the district court of said New Hampshire to be instituted as above set forth, as had in said month of May, A. D. eighteen hundred and fifty-one, in the name of said Benjamin C. Clark and said Benjamin C. Clark and Company, in the district court of the United States for the district of New Hampshire, and by

said misrepresentation fraudulently induced said district court of the district of New Hampshire to appoint the said William H. Y. Hackett assignee as aforesaid; and as a further means of consummating their said designs, the said conspirators caused said original proceedings in the circuit court for the District of Columbia to be commenced in the name of said Benjamin C. Clark, and as a further means of consummating their said conspiracy, caused the said William H. Y. Hackett, assignee, to present his said bill, in the month of June, A. D. eighteen hundred and fifty-one, to the said circuit court of the United States for the District of Columbia, and to become the party complainant in said cause as aforesaid. And your orator further says, that as a more sure and effectual means of coming at and consummating the said purposes and designs of the said conspirators, one of them, to wit, one John L. Hayes, attorney at law, duly licensed to practice in the circuit court of the United States, and acting in pursuance of the previous plans of all said conspirators, offered his professional services and skill to your orator, to act for him and his interest in the management and conduct of the defence to the bills of the said Benjamin C. Clark and said William H. Y. Hackett, in said circuit court for the District of Columbia, and your orator, being ignorant of the real designs and purposes of said John L. Hayes and said conspirators, and confiding in the said Hayes's skill and integrity, did retain and employ the said Hayes, and confided to and charged him with the whole duty of getting up and preparing the defence to said bills in said circuit court; but your orator says, as he is informed and verily believes, that during the whole time said Hayes was pretending to prepare and to act for your orator's interest in the defence of said bills, the said Hayes was untrue to your orator's interest, and so aided and assisted the adverse party, by keeping out, contrary to the instructions of your orator, certain material evidences and matters of defence, that said circuit court decreed the case against your orator, and according to the prayer of the bill originally filed by said Benjamin C. Clark, in which cause the said Hackett, as such assignee, afterwards become the complainant as aforesaid. And among other things your orator avers that he put into the hands and possession of said Hayes certain evidences of indebtedness of said Benjamin C. Clark to your orator, which indebtedness had accrued since the rendition by the superior court of the pretended judgment before set forth, to wit, two certain valid claims among other things of your orator's, to wit, one against the Ocean Insurance Company of said Boston, for the loss of the barque Two Friends and her cargo of salt, amounting together to fourteen thousand six hundred and sixty-one dollars; principal and interest thereof at six per cent. per

annum, up to May fourteenth, eighteen hundred and fifty-one, amounts to twenty-nine thousand three hundred and twenty-nine dollars and twenty-eight cents; and which last said claim was pending in the supreme judicial court, holden at said Boston, on and before the twenty-fourth day of June, A. D. eighteen hundred and forty-two, in behalf of your orator, and managed and controlled, as agent and attorney, by said Benjamin C. Clark. And said Benjamin C. Clark was instructed by your orator to prosecute the said claim to the end, without any authority whatever to compromise said claim. And your orator believes and has reason to believe that said Benjamin C. Clark, at the time and a long time after said last named claim for loss of said barque Two Friends and her cargo of salt, was a large stockholder in the said Ocean Insurance Company, and your orator holds said Benjamin C. Clark liable for said claim against said Ocean Insurance Company, he having fraudulently compromised and settled said claim to the damage of your orator in the said sum of twenty-nine thousand three hundred and twenty-nine dollars and twenty-eight cents. And also for another claim of your orator, to wit, against one Charles W. Cartwright and one Enoch Train of said Boston, and assignee of P. & C. Flint & Company of said Boston, to wit, for one-half of brig Charles and her earnings, amounting to fifty-nine hundred and seventy-six dollars and two cents, and interest thereof at the rate of six per cent. per annum up to the fourteenth day of May, eighteen hundred fifty one, amounting to forty-four hundred and sixty-nine dollars and ten cents, total amount of same, principal and interest, to ten thousand four hundred and forty-five dollars and twelve cents, and which last named said claim was pending in the supreme judicial court, holden at said Boston on and before the twenty-fourth day of June, A. D. eighteen hundred and forty-two, in behalf of your orator, and managed and controlled, as agent and attorney, by said Benjamin C. Clark. And said Benjamin C. Clark was instructed by your orator to prosecute said last named claim to the end, without any authority to compromise said claim. And your orator is informed and believes that said B. C. Clark has recovered and settled your orator's last named claim against said Charles W. Cartwright and said Enoch Train, and your orator was then entitled to recover the same from the said Benjamin C. Clark, to wit, the said sum of ten thousand four hundred and forty-five dollars and twelve cents. And your says that he in due season distinctly instructed and directed said Hayes to file and present the same with other evidences of said B. C. Clark's indebtedness in the trial of said cause, in order to show that at all events the said B. C. Clark's pretended judgment was satisfied, but this the said Hayes, well knowing the premises, fraudu-

lently and designedly neglected to do. And your orator says further, that he was ignorant of the aforesaid fraudulent acts and omissions and conspiracies of the parties aforesaid until after the decree of the said supreme court affirming the decree of the said circuit court, and until after the final decree. And your orator well hoped that no disputes would have arisen touching the premises, and that the said Hackett, when the said false representations which had led him to take part in the said conspiracy against your orator as aforesaid were made known to him, the said Hackett would have aided your orator to reverse the said decree of said Supreme Court and of the circuit court for the District of Columbia, and to allow your orator to receive the said sum of money so awarded to him as aforesaid, and have complied with your orator's reasonable requests in that behalf, as in conscience and equity he ought to have done.

But now so it is, may it please your honors, that the said Hackett combining and confederating with divers persons as above mentioned, and with divers other persons at present unknown to your orator, but whose names your orator prays that he may be at liberty to insert herein with apt words to charge them as parties defendant hereto, if they can be joined without ousting the jurisdiction of this court and absolutely refuse to comply with such reasonable request of your orator. And your orator further says, that as to the several allegations, matters and things herein set forth, he is without adequate remedy in law; he therefore prays that the same may be inquired into in equity by this honorable court, and to this end reserving his rights to amend his bill, if necessary. And your orator submits to this court that no other person than the said Hackett, now known to your orator as such assignee, is necessary party defendant to this bill, and especially that this defendant has not joined in his bill the said B. C. Clark, John Clark, and Charles G. Nazro, who, though not necessary parties, would be properly joined herein as parties defendant, because they being citizens of the State of Massachusetts, cannot be joined as parties defendant without ousting the jurisdiction of this court as to the other parties. And your orator further says, that he has not joined the said Charles H. Dougherty, and Michael Dougherty, and the said Joseph Hopkins Stewart, all citizens of the State of New York, who, though not necessary parties, might be joined as parties defendant, as partakers in said conspiracy as aforesaid, because the said Charles, Michael, and Joseph are without the jurisdiction of this court. But your orator prays that if they should come within the jurisdiction of this court, process may, upon his application, issue to make them parties defendant to this bill. To the end therefore that the said Hackett, and any other persons who shall be made or become at any time in the course

of this proceeding parties defendant hereto, and their confederates, may full, true, direct, and perfect answers make to all and singular the premises, as if thereto distinctly examined upon special interrogatories, your orator hereby expressly waiving the oath of the said Hackett and any other parties to their answers, and that the said decrees of the Supreme Court of the United States on appeal from the said circuit court for the District of Columbia, and of said circuit court for said District ordering the said sum of money to be paid to said Hackett as such assignee, and enjoining the Secretary of the Treasury from paying the same to your orator, may be set aside and annulled by reason of the fraud and collusion aforesaid, and that the said sum of money may be ordered and decreed to be paid by said district court for said New Hampshire to your orator, with damages and costs, or to be returned into the Treasury of the United States for the benefit of your orator, and for such further and other relief in the premises as the nature of the case shall require, and to your honors shall seem meet. Your orator prays that a subpœna be issued and served on the said William H. Y. Hackett, commanding him to appear and answer the several allegations and matters of this bill as fully as if they were here again repeated, and that damages and costs may be decreed to be paid to your orator by said Hackett or other parties who may come in to defend this present suit.

FERDINAND N. CLARK.

J. WARREN TOWLE &
GEO. D. PORTER,
Solicitors.

DISTRICT OF MASSACHUSETTS.

June 11, 1857.—Personally appeared before me the above named Ferdinand N. Clark, and made oath that the matters in the above bill of complaint stated to be on his own knowledge are true, and that those stated to be true to the best of his knowledge and belief are true to the best of his knowledge and belief.

C. W. LORING,
U. S. Comm'r.

And on the 15th day of August, A. D. 1857, is filed the answer of William H. Y. Hackett to the bill of complaint of Ferdinand N. Clark, as follows:

This defendant, the said William H. Y. Hackett, of Portsmouth, in the State of New Hampshire, and a citizen of said State of New Hampshire, now and at all times reserving unto himself all advantage and benefit of exceptions to the errors and imperfections of said bill, in answering thereto, or to so much

thereof as he is advised that it is material for him to make answer unto, he answering says:

That he has been informed and believes the said Ferdinand N. Clark, on the 28th day of January, A. D. 1843, filed his petition in the district court of the United States of America, within and for the district of New Hampshire, to be declared a bankrupt; but whether the said Ferdinand N. Clark then and there had his residence in said district of New Hampshire this defendant does not know and cannot answer upon his knowledge, information or belief, or otherwise. But he admits that on the 28th day of March, A. D. 1843, said complainant was by said district court declared a bankrupt, and that on the 17th day of December, A. D. 1844, said complainant was by said district court decreed to be fully discharged of and from all his debts owing by him at the time of the presentation of his petition to be declared a bankrupt.

And this defendant further admits that on the 22d day of March, A. D. 1843, said district court appointed one John Palmer of South Hampton, in said district of New Hampshire, assignee; but he denies that said Palmer, assignee, was decreed a license to sell the assets of said bankrupt; but he admits that said district court on the 14th day of March, 1845, decreed a license to John Palmer, assignee as aforesaid, to sell the demands of said bankrupt Clark set forth in schedule marked "A" annexed to said assignee's petition for said license within six months thereafter, by giving public notice, by either posting up or inserting the same in some newspaper ten days before the sale of his demands; and that said John Palmer, assignee, as aforesaid, on the 9th day of April, A. D. 1845, undertook for the sum of two dollars to convey, transfer and assign and make over to said R. M. Clark said demands, effects, claims, &c., of said Ferdinand N. Clark, set forth in the schedule "A" or "B" annexed to said bill of sale, said R. M. Clark being the highest bidder therefor at auction, held on said 9th day of April, A. D. 1845, a copy of which bill of sale is annexed to said complainant's said bill of complaint. But whether said John Palmer, assignee as aforesaid, prior to said sale, gave the notice thereof required in and by said license, or whether he gave any notice, this defendant has not been informed, except by said complainant's said bill, and cannot answer upon his knowledge, information or belief, or otherwise, and prays that said complainant may be required to make proof thereof.

But this defendant denies that the claim of said complainant in bankruptcy as aforesaid, against the Mexican republic, was included in the schedule "A" annexed to the petition of said John Palmer, assignee, praying for said license, or that said license to sell the demands of said complainant bankrupt as aforesaid applied to, or was intended to apply to, or to in-

clude, or to authorize the sale of, said claim against said Mexican republic, or that said license gave to said Palmer any authority to sell, or that said Palmer, assignee as aforesaid, ever legally sold to said R. M. Clark, or any other person, said claim of said complainant in bankruptcy against the Mexican republic, or ever had a license from said district court to sell said claim against said Mexican republic.

And this defendant denies that any part of the assets of said bankrupt passed to said R. M. Clark by reason of said pretended sale or bill of sale of said Palmer, assignee, or otherwise.

And this defendant further answering, admits that he has been informed and believes that said complainant on the next day after said pretended sale, to wit, on the 10th day of April, A. D. 1845, undertook to purchase of said R. M. Clark, and that she undertook by said bill of sale to convey to him all the assets which said Palmer as assignee undertook to sell to said R. M. Clark on the 9th day of April, A. D. 1845; and he admits that a true copy of the bill of sale thereof from said R. M. Clark to said complainant is annexed to said bill of complaint. But this defendant does not know and has not been informed whether said last named bill of sale from said R. M. Clark to said complainant included said claim against said republic of Mexico, and cannot answer upon his knowledge, information, belief, or otherwise, as to said las tnamed matter, or whether said bill of sale was given for a good and valid consideration, or upon what consideration; but he believes said bill of sale was made in pursuance of a fraudulent purpose of said R. M. Clark and said complainant to obtain control of said complainant's assets. But this defendant denies that said bill of sale conveyed to said complainant any right, title or interest in or unto said claim against the Mexican republic, or any other assets of said complainant in bankruptcy.

And this defendant further answering, admits that on or about the 15th day of April, A. D. 1851, there was awarded, by a board of commissioners duly appointed and authorized to settle the claims of American citizens against the republic of Mexico, under the treaty of the 2d day of February, A. D. 1848, and an act of the Congress of the United States passed the 3d day of March, A. D. 1849, to and in the name of said complainant, the sum of eighty-six thousand seven hundred and eighty-six dollars and twenty-nine cents, and payable at the Treasury of the United States of America, on the 15th day of May, A. D. 1851. But whether said claim was for the seizure of the cargo of the schooner Louisiana, on or about the month of September, A. D. 1825, or at any other time, this defendant does not know and has not been informed, save by said bill of complaint, and cannot answer upon his knowledge, information or belief, or otherwise, but he has been informed and believes that said award

was made for the same claim named and described by said complainant in his schedule of assets in bankruptcy aforesaid, as a "claim against the Mexican republic."

And this defendant further answering, says that though said claim belonged to the assignee of said complainant in bankruptcy, the said commissioners made said award in favor of said complainant, and in his own name, in ignorance of the fact that the claim on which said award was founded appertained to the assignee of said complainant in bankruptcy, or that said complainant had set up said claim in his own name and for his own benefit before said commissioners, in derogation of the rights of said assignee in bankruptcy and for the purpose of defrauding his (the said complainant's) creditors.

And this defendant admits that said Benjamin C. Clark did, on the 15th day of May, A. D. 1851, petition by bill to the circuit court of the United States within and for the District of Columbia, for an injunction, directing the Secretary of the Treasury of the United States not to pay the amount of said award to said complainant, his agents, servants, &c., but to retain the same until the further order of said circuit court; and that he further prayed that said John Palmer, assignee, or such other assignee as might be duly appointed by the said district court of New Hampshire, might have leave to come in and make himself the party complainant in said cause.

But this defendant denies that at the time of making said petition said Benjamin C. Clark was a debtor to said complainant, or that he since has been, or now is, in any wise indebted to said complainant; but this defendant has been informed and believes, and therefore says, that at the time of making said petition said complainant was indebted to said Benjamin C. Clark in a large sum, and that said debt has never been paid or discharged, but there was and ever since has been, and now is, in full force, and has been duly proved by said Benjamin C. Clark against said complainant in bankruptcy, and said proof still remains in full force and is a part of the record of said complainant's said case in bankruptcy.

And this defendant admits that said Benjamin C. Clark, in his individual capacity, then claimed and now claims to be a creditor of said complainant, by force and virtue of a certain judgment rendered against said complainant in the city of New York, in the State of New York, where the said complainant then resided and had his domicil, on or about the 29th day of June, A. D. 1842, by the consideration of the justices of the supreme court of and for the city, county and State of New York, in favor of said Benjamin C. Clark, for the sum of twenty-five thousand four hundred and fifty-three dollars and twenty-eight cents, or about that sum; but he denies that said judg-

ment was obtained by fraud and collusion, but says that it was recovered openly and fairly, and agreeably to the law of the land and in conformity with the rules of said court, upon and for a good and sufficient cause of action; and he further says that the said judgment has never been reversed, annulled, set aside or satisfied, but now is, and from the date thereof ever has been, in full force.

And this defendant further answering, says that he admits that said Charles G. Nazro, then and now a copartner with said Benjamin C. Clark, and a citizen of said Massachusetts, on the 15th day of May, A. D. 1851, claiming and representing that said Benjamin C. Clark and said Nazro as copartners, under the name of Benjamin C. Clark and Company, and said Benjamin C. Clark, in his individual capacity, were creditors of said complainant, and on their behalf did petition said district court of New Hampshire, sitting in bankruptcy, for the appointment of an assignee of the estate of said complainant in bankruptcy instead of said John Palmer, whom said Nazro represented to said court as having deceased, and who, this defendant says, had deceased, and prayed that said William H. Y. Hackett, or some other suitable person, might be appointed assignee as aforesaid; and also further representing that said John Palmer had deceased without disposing of all the assets or collecting all the dues belonging to the estate of said bankrupt, and representing that recent occurrences had given value to some of said assets; and thereupon said William H. Y. Hackett, on the 19th day of said May, 1851, was appointed assignee for the purpose prayed for in said petition.

But this defendant denies that said Charles G. Nazro falsely pretended that he and said Clark were creditors of said complainant; but he has been informed and believes, and therefore says, that said Benjamin C. Clark and Charles G. Nazro, copartners as aforesaid, were then and there creditors of said complainant, and on the twenty-first day of May, A. D. 1851, duly proved their claim in bankruptcy against said complainant in the sum of nine hundred and seventy dollars and twenty-six cents, which claim and proof still remain of record, as a part of the said complainant's said case in bankruptcy in said district court, not having been either paid or satisfied, set aside, or in any way vacated or impeached.

And he further denies that said Nazro, in and by said petition, made any false representation in regard to the situation of said complainant's estate in bankruptcy at the time of said Palmer's death, or at the date of said petition; but on the contrary, he has been informed and believes, and therefore says, that all and singular the representations of said Nazro in said petition are and were true, and that said Palmer died leaving

assets unsold and dues uncollected belonging to the said complainant's said estate in bankruptcy, and that then recent occurrences had given value to said assets.

And this defendant further admits that he did, on or about the second day of June, A. D. 1851, petition by bill the said circuit court of the United States for the District of Columbia, claiming to be assignee as aforesaid and duly qualified to act, and that he prayed leave to come in under the prayer of said original bill, filed by the said Benjamin C. Clark as aforesaid, and to be made the complainant in said cause, and by reason of the divers matters and things alleged therein, was entitled to have and receive the whole of said sum so awarded as aforesaid, to the end that the same should be distributed, under the direction of said district court of New Hampshire, sitting in bankruptcy, to the creditors of said complainant, according to law; but he denies that there was anything falsely alleged in his said petition; and, on the contrary, he now says that all and singular the facts set forth in and by his said petition were and are true; and for greater certainty in regard to the contents of said petition, this defendant craves leave of this honorable court to exhibit a copy thereof from the records of said circuit court of the United States for the District of Columbia.

And he admits that he was accordingly admitted as such complainant in the said cause, and thereafter prosecuted the same as such assignee, and that such proceedings were subsequently had in and by said circuit court, and such decree by said court made, on or about the thirtieth day of May, 1853, as are set forth by said complainant in said bill.

And he further admits that said complainant appealed from said judgment of said circuit court of the District of Columbia to the Supreme Court of the United States, sitting at Washington, in said District of Columbia, and that such proceedings were had in and by said Supreme Court that the judgment of said circuit court was affirmed.

And he further admits that, in accordance with the decree of the said circuit court of the United States for the District of Columbia, affirmed by said Supreme Court as aforesaid, the said United States district court for the district of New Hampshire have received fifty-nine thousand five hundred eighty-five dollars and eighty-six cents, being the net amount of said award after the said payments to the agents who prosecuted said claim and the payment by said assignee of a part of the expense incident to the litigation aforesaid, and that said district court now retains said sum of fifty-nine thousand five hundred and eighty-five dollars and eighty-six cents, to be distributed according to law.

And this defendant further says that he has been informed and believes, and therefore says, that at the time of the filing of the petition of said complainant to be declared a bankrupt, and ever since that time, said complainant was, and ever since has been, and now is, indebted to said Benjamin C. Clark, in a large sum, to wit, in the amount of the judgment before named, and being the same named in said Benjamin C. Clark's bill, presented to the circuit court of the District of Columbia; and he denies that the said judgment was obtained by the said Benjamin C. Clark by fraud or collusion; and he denies that said Benjamin C. Clark and said Charles G. Nazro, as co-partners, or said Benjamin C. Clark individually, one or both, were, on said twenty-eighth day of January, A. D. 1843, or at any time since have been, or now are, indebted in a large amount, or in any amount, to said complainant or to his estate in bankruptcy; but he admits that said complainant, in his schedule of assets in bankruptcy, described said Benjamin C. Clark, and Benjamin C. Clark & Company, as being indebted to him, the said complainant.

And this defendant has been informed and believes, and therefore says, that said John Palmer, assigee as aforesaid, left, at the time of his death, the business of said complainant's estate in bankruptcy unfinished, and that he, the said Palmer, did not, on the 9th day of April, A. D. 1845, or at any other time, close up the business of said complainant's estate in bankruptcy.

And this defendant says that in his proceedings aforesaid he did not violate or exceed the authority of the said court, but that he had authority as assignee, as aforesaid, and that it was his duty to institute and carry forward such proceedings as he has instituted and carried forward to final judgment.

And he denies that he has been deceived in regard to said matter by the representations of said Benjamin C. Clark, or any other person or persons, or that he has made any but true representations to any of said courts, or that either of said courts made either of said decisions or decrees by reason of not knowing the real facts and proof in the case, or by reason of any false representations or false exhibits, or by the collusion or fraud of either of the solicitors or councillors of said complainant, but, on the contrary, he says that both of said courts made both of said decisions and decrees, because the truth of the case was fully and fairly laid before them by this defendant and his counsel, and notwithstanding the strenuous and faithful efforts of the able solicitors and counsel for the complainant to procure decisions and decrees in favor of said complainant. And he admits that both said courts did decide and decree that the amount of said award should be paid to this defendant as assignee as aforesaid, and for the purpose aforesaid.

And this defendant further answering, says that he does not know, and has not been informed, and cannot of his knowledge, information or belief, or otherwise, say whether at the time said complainant made his said petition in bankruptcy, and a long time before, since the month of September, A. D. 1825, when the said cargo was captured by a Mexican national vessel of war, and was condemned by a Mexican republic court of admiralty, or on the 9th day of April, A. D. 1845, the claim against the republic of Mexico, awarded to said complainant, had been considered by said complainant, or by any or all persons that had a knowledge of the nature of said claim, worthless and of no value at all, or whether it was so considered by said John Palmer, or whether it had been abandoned by said complainant from September, A. D. 1825, until February, A. D. 1842, or whether the claim for the schooner Louisiana, which was owned in part or whole by her former master, Michael Dougherty, of the city, county, and State of New York, and then, and now, a citizen of said State of New York, was also abandoned; and this defendant prays that said complainant may be required to make proof thereof.

And he further says that he does not know, and cannot answer, of his knowledge, information, or belief, or otherwise, whether it appears by authenticated proceedings on the files of the board of commissioners in the city of Washington, in the District of Columbia, whether said cargo was condemned by a Mexican republic court of admiralty. But he has been informed, and believes, and therefore says, that on or about the third day of March, A. D. 1849, an act passed the Congress of the United States, and was duly approved by the President of the United States, providing for the appointment of a board of commissioners to settle claims of American citizens against the Mexican republic; and that such commissoners aforesaid were duly appointed, commissioned, and accepted said trust, and performed the duties thereof. But he has no knowledge, information, or belief, whether the said condemnation, among other things, alleged that said schooner and cargo intended an illicit trade with the Mexican republic for having sailed from the port of Havana, in the island of Cuba, an enemy's port, and engaged in war, and claimed that said schooner and cargo were captured within the waters of the Mexican republic.

And he says that he does not know, and cannot answer, of his knowledge, information, or belief, or otherwise, whether the agents, who prosecuted other similar claims, declared to said complainant before said claim was awarded, and a long time after said claim was sold to said R. M. Clark, that similar claims had been rejected by the board of *commissions* who

were authorized to settle such claims, or whether said complainant can or will prove to the satisfaction of this honorable court that the claim for the seizure of the cargo of the schooner Louisiana aforesaid, against the republic of Mexico, was not only considered valueless by well-informed judges, or its recovery impossible, or whether said complainant believed such representations, or whether, but for certain public events or occurrences which happened, favorable to the allowance of said claim, many years after said claim was sold by the late John Palmer, assignee, to R. M. Clark aforesaid, such as the late war with Mexico, and the treaty Guadaloupe Hidalgo, and other material, etc., etc., or whether but for the great and skilful efforts thereafterwards made by said complainant, the said claim would not and could not have been allowed by the board of commissioners aforesaid. But he avers that said complainant did no more than he was bound to do to aid in the recovery of a just claim for the benefit of his creditors, and he denies that said complainant, by reason of his skill and services, or the amount of money and time spent by him in and about the proving and recovering said claim, or by reason of the services of his friends, of which, or whether paid or not paid, this defendant has no knowledge or information, but he believes they have not been paid by said complainant, is entitled to receive said award or any part thereof now remaining in the custody of said district court, either with or without damage or costs.

And this defendant admits that the said Ferdinand Clark, mentioned in the bills of said Benjamin C. Clark and said William H. Y. Hackett, and in the bankrupt proceedings before mentioned, and the said Ferdinand N. Clark, mentioned in said bill of complaint, to which this is an answer, are one and the same person.

And this defendant further answering, says that he does not know, and cannot answer, upon his knowledge, touching the character of said judgment, or the manner in which it was recovered, or the debt upon which it was founded; but he has been informed, and believes, and therefore says, that on the 24th day of June, A. D. 1842, the said Benjamin C. Clark, then and ever since a resident in Boston, in the district of Massachusetts, and the said complainant, then residing and having his domicil in the city, county, and State of New York, by the consideration and judgment of the superior court of said city of New York, in a suit then and there duly pending between said parties, and in said court recovered judgment against said complainant for the sum of twenty-five thousand three hundred and fifty dollars twenty-eight cents, debt or damage, and costs, one hundred and three dollars, making in the whole twenty-five thousand four hundred and fifty-three dollars and twenty-eight cents,

which said judgment has never been reversed, annulled, set aside, or in any way vacated, or in anywise satisfied or paid, but now is, and ever since has been, in full force. And he denies that said judgment was obtained through and by fraud and collusion of said Benjamin C. Clark, or any other person or persons.

And this defendant further answering, says that he does not know, and cannot answer, upon his knowledge, information, or belief, or otherwise, whether said complainant, a reasonable time, or any time before said suit was to be in order for trial, in which said judgment was afterwards obtained, retained and employed said Joseph Hopkins Stewart, or paid him his reasonable fees to attend to, manage or defend said suit for and in behalf of said complainant, but he has been informed and believes that said Joseph Hopkins Stewart was then and now is a resident in said city of New York; and that he then was and now is an attorney and counsellor at law, duly licensed to practice in said supreme court of said city of New York, but he does not know, and upon his own knowledge, information or belief, or otherwise, cannot answer whether said complainant fully and plainly instructed said Stewart in the nature and defence of said suit or directed him in the conduct or management thereof, or whether said complainant directed his counsel, the said Stewart, in the conduct and management of said suit as follows:

First—That the foundation of said suit, no specification of claim then having been filed or declared on in said suit, was groundless and fictitious; that no good and sufficient cause of action existed.

Second—That if any cause of action was or should be set forth in said case, or if any cause of action ever existed in said Benjamin C. Clark's hands against said complainant, that the same had been cancelled and annulled, by payment and satisfaction in full, so that said complainant was not then, nor has ever since been, indebted to said Benjamin C. Clark, but, on the contrary, that said Benjamin C. Clark was then largely indebted to said complainant.

But this defendant believes that said Joseph Hopkins Stewart was faithful and true to said complainant in the management of this suit; and he denies that had said Stewart been faithful and true to said complainant's interest, the fact of said Benjamin C. Clark's indebtedness to said complainant would have been made to appear on the trial of said case.

And this defendant further answering, says that he does not know, and cannot answer upon his own knowledge, information, or belief, or otherwise, whether said complainant put into the hands of said Stewart divers evidences of indebtedness from

said Benjamin C. Clark to said complainant to be used in further defence to the claim of said Benjamin C. Clark in said action, either as payment, or by way of set-off, or if the same were not in any way to be shown in payment, or pleaded in set-off, in defence of said action, then by bringing a proper action or actions upon the claims of said complainant against said Benjamin C. Clark, in such way and manner as that the same might be put into judgment against said Benjamin C. Clark, and such judgment set off against or in satisfaction of such judgment, if any, if said Benjamin C. Clark should recover in such action against complainant; and he prays that said complainant may be required to make proof thereof.

And this defendant further answering, says that in his belief, said complainant never put any evidences of indebtedness from said B. C. Clark to said complainant, nor had he any such evidences to put into said Stewart's hands, nor did the said complainant ever put into the hands of said Stewart, among other such claims, divers claims against the said Benjamin C. Clark, as the party liable for the payment of divers sums of money due to said complainant for divers lots of coffee, shipped by said complainant from Havana, by order and request of said Benjamin C. Clark, to one John Clark, of Boston, in the State of Massachusetts, then at New Orleans, between the month of February, A. D. 1830, and the month of March, A. D. 1830, or at any other time, or to any other person, or to any other place, amounting, with or without interest, to the sum of eighteen thousand one hundred seventy-six dollars fifty-five cents, or to any other sum; nor a claim for another sum of money, amounting, with or without interest, to three thousand eight hundred eighty dollars fifty cents, or any other amount, for money had and received by said Benjamin C. Clark, or any other person, on or about December twenty-eighth, 1837, from one John Preston of said Boston, or any other person, to the use of said complainant; nor that said Benjamin C. Clark, on said twenty-eighth day of December, 1837, or at any other time, specifically agreed to appropriate or pay for said complainant's benefit or behoof, or that he was ever bound in conscience to have appropriated or paid said sum, or any sum, for the benefit of said complainant, and neglected to fulfil his contract or obligations in relation thereto.

And this defendant further answering, says that he has no knowledge or information concerning the complainant's said exhibit, No. 4, of his alleged claims against said Benjamin C. Clark, annexed to said bill, and amounting to about two hundred and fifty-five thousand nine hundred forty-three dollars sixty-two cents, except from the complainant's said bill and exhibit, and the price, two dollars, which said complainant sets forth therein

that said R. M. Clark paid for said claims, and all other assets of said complainant, at auction, on the ninth day of April, A. D. 1845, but he believes, and therefore says, that all and singular said claims of said complainant against said Benjamin C. Clark, whether set up in his said bill, or attached thereto as exhibits, are frivolous, false, and fraudulent.

And this defendant further answering, says that he does not know, and cannot answer upon his knowledge or information, whether all or any of said claims and demands of said complainant against said Benjamin C. Clark were communicated by said complainant to said Stewart, as the attorney of said complainant, to be so used in defence or in set-off to said action, or to be set off in judgment to be obtained thereon to and against the judgment, if any, which said Benjamin C. Clark should in said action recover against said complainant, or whether said Stewart thereupon, as such attorney of said complainant, agreed or undertook to so use the same as set forth in said bill; or whether said Stewart instructed said complainant that the same could be properly so used and made available to said complainant as aforesaid, and for the purposes aforesaid, in connection with the suit of the said Benjamin C. Clark in said superior court in and for said city of New York against said complainant as aforesaid; or whether said Stewart, well knowing the premises, fraudulently, wilfully or collusively neglected his duty in that behalf to said complainant. But this defendant believes, and therefore says, that if said complainant retained and paid said Stewart to conduct said suit for him, and placed in his hands any demands against said Benjamin C. Clark, proper or available, to be used for the purposes set forth in said bill, that said Stewart attended to his duty to said complainant in a seasonable time, and defended said complainant in said suit with fidelity and ability, and that said complainant was not injured or prejudiced in said suit by anything done or omitted to be done by said Stewart.

And this defendant further answering, says that he does not know, and cannot answer upon his knowledge or information, whether said Stewart, notwithstanding he was as to the several matters of defence then and there specifically and fully and in due and sufficient season instructed and directed in the said premises, or whether he was so directed, or whether said Stewart well knew that said complainant was always ready and willing to assist the said Stewart in said defence when said Stewart should call upon him for aid and assistance in said cause, or in procuring evidence of such claims of said complainant, or whether said Stewart, well knowing any, either or all and singular the said premises, and notwithstanding he was employed and paid by said complainant as aforesaid, fraudulently colluded or

conspired with said Benjamin C. Clark and the counsel of said Benjamin C. Clark, both or either, or said John Clark, the brother of said Benjamin C. Clark, and in pursuance of such fraud and collusion, or otherwise, designedly, fraudulently, or wilfully or maliciously, abandoned the interests of said complainant, or so managed and conducted said suit as that said complainant was defaulted and judgment rendered against him as aforesaid. But he believes, and therefore says, that said Stewart obeyed the instructions of said complainant, so far as he could properly do so, and made such use as could legally and properly be made of said several alleged claims of said complainant against said Benjamin C. Clark, and seasonably and properly and faithfully performed his duty as the attorney and counsellor of the complainant in said suit and in said premises, and that said Stewart did not in anywise collude or conspire with said Benjamin C. Clark, or the counsel of said Benjamin C. Clark, or said John Clark, or anyother person, or in pursuance of said fraud or collusion designedly, fraudulently, wilfully or maliciously, or otherwise, abandon the interests of said complainant; or so manage or conduct said suit, or the defence thereof, or the demands placed in his hands as aforesaid, as that said complainant was defaulted; but if said Stewart allowed said complainant to be defaulted in said suit it was when and because said Stewart could not, in good faith and in truth, ask for longer delay, or claim that he had a good and valid defence to said Benjamin C. Clark's claim, or any part of it, which further delay would enable him to bring forward or establish; and because said Benjamin C. Clark had a good and valid cause of action against said complainant, and because said complainant had no valid or available defence to said cause of action, or any part of it, and because the rules of said court and the laws of the land would no longer allow said suit to remain undisposed of. This defendant does not know, and has not been informed, who was the counsel of said Benjamin C. Clark, who prosecuted said suit against said complainant, and he prays that said complainant may be required to name and describe him; nor does he know the said J. Hopkins Stewart, but he has been informed and believes that said Benjamin C. Clark has a brother named John Clark, who now resides in Boston, but where he has heretofore resided this defendant has no knowledge, information or belief.

And this defendant further answering, says that he does not know, and cannot answer upon his knowledge or information, whether said complainant was entirely ignorant of the alleged fraud and collusion, or of the rendition of said judgment against him, until after the final rendition thereof; and too late to obtain his just and legal rights, or get a new hearing in the said case by and before the said superior court of said New York

city. But this defendant believes, and therefore says, that said complainant, during the pendency of said suit and at the time of the rendition of the judgment therein, had the same knowledge thereof, and of all the proceedings and steps of the said Stewart, as his counsel therein, that he now has.

And this defendant further answering, says that he never had any acquaintance with, or, to his knowledge, saw, said complainant, and knows nothing of him, or his situation, or proceedings in bankruptcy, or what would be the effect of his alleged discharge in bankruptcy, except what is set forth in said complainant's said bill, and also excepting what is contained in the record of said complainant's proceedings in bankruptcy, and this defendant's proceedings as assignee of his estate therein, and has no knowledge or information of the reasons why said complainant did not take steps to procure said judgment of said Benjamin C. Clark against him to be set aside; but he believes the reasons why such steps were not taken was because there was no valid grounds for their being taken.

And this defendant further answering, says that he does not know, and cannot answer upon his knowledge or information, whether said complainant was fraudulently instructed by his counsel engaged in the bill in chancery of said Benjamin C. Clark and this defendant against said complainant, in said circuit court of the United States for the district of Columbia, or whether, relying on the instructions of his counsel in said suit, he verily believed that the bankrupt proceedings of the said complainant, and the acts and doings of the said John Palmer, assignee as aforesaid, and the said bill of sale executed by said Palmer, undertaking to convey the title to the Mexican claim as aforesaid, and said complainant's discharge in bankruptcy, would form or make a perfect or complete bar to the matters and things by the said Benjamin C. Clark and this defendant in their respective bills pleaded, so that whether this aforesaid judgment was valid or not, or whether it existed or not, was of no consequence to said complainant, as his discharge would be a good and sufficient and complete bar to the same.

But this defendant has been informed, and believes, and therefore says, that the suit of this defendant as assignee against said complainant in the circuit court of the United States for the District of Columbia, and affirmed by said Supreme Court of the United States, on appeal as aforesaid, was decided against said complainant and in favor of this defendant, by reason of said complainant's fraudulent proceedings in and about his said case in bankruptcy, and in and about said claim against the republic of Mexico, and not by reason of the fraud of any or either of his counsel, or of other persons, in this or any other suit, and that judgment was rendered against said complainant in favor

of said Benjamin C. Clark, in said superior court of said city of New York, because said Benjamin C. Clark had a good and legal cause of action in said suit against said complainant, and because said complainant had no good or legal defence thereto, or any part thereof, and not by reason of the fraud of his own counsel, or the counsel of the said Benjamin C. Clark, or of any other person or persons, in this or any other suit.

And this defendant believes, and therefore says, that if said complainant's counsel, in this defendant's before named suit in chancery against him, gave him the advice set forth in his said bill of complaint, it was so given not by reason of any fraudulent design on the part of any or either of his, the said complainant's, counsel in said suit, but because said complainant concealed from his said counsel his own fraudulent proceedings in and about his said case in bankruptcy, and in and about said claim against the Mexican republic, and his management thereof, and because said counsel's advice was based upon said complainant's representations, and not upon the facts of the case.

And this defendant further answering, says that he does not know, and cannot answer upon his knowledge or information, whether said complainant, about the time the said award was made by the said board in favor of said complainant, or at any other time, one Charles H. Dougherty, of the city, county and State of New York, and a citizen of said State of New York, made claim by letter of the 28th day of April, A. D. 1851, or at any other time, or in any other manner, or whether said exhibit, number IH, annexed to said bill, is a true copy of such letter, upon said complainant for ten per cent. on the amount of the said award, but he admits that ten per cent. upon the gross amount of the said award would be about eight thousand six hundred seventy-eight dollars ninety-two cents; nor does he know or has he been informed whether if said Charles H. Dougherty claimed said amount as aforesaid, or any other amount, he claimed that he was entitled to such amount for services which he, the said Dougherty, had rendered said complainant in getting said Mexican claim allowed, or whether said complainant thought otherwise than the said Dougherty, and was or was not aware that said Dougherty had rendered any benefit or service to said complainant in the said matter, or whether he ever was or was not employed by said complainant so to do; and whether, therefore, or for any other reason, said complainant justly or unjustly refused to allow said Charles H. Dougherty his pretended claim, or any part thereof; nor whether said Michael Dougherty, on or about the first day of May, A. D. 1851, or at any other time, at Boston, or at any other place, claimed one-quarter part, or any, and if any, what part, of said award, in addition to, or as part of, his son's, Charles H. Dougherty's,

aforesaid ten per cent.; or whether he said that if said complainant did not comply with his or their demands as aforesaid, he, the said Michael, "would tie up" the whole of said award in the city of Washington and District of Columbia, or in any other place, and that said complainant would not get any part of said award; or whether said complainant has been informed, or believes, (and if said complainant has been so informed, and believes, this defendant denies the said charges, all and singular,) solely because said complainant would not allow said Charles H. Dougherty and Michael Dougherty their several and respective claims as aforesaid, they, the said Charles H. Dougherty and Michael Dougherty, and J. Hopkins Stewart, and one John L. Hayes and this defendant, intending and contriving to defraud said complainant out of his just and equitable dues and rights, and to deprive him of the benefit of said award, conspired and confederated together, and as a means of the final consummation of their designs, caused the said proceedings, in the said district court of said New Hampshire, to be instituted as set forth in said bill, as had in said month of May, A. D. 1851, in the name of said Benjamin C. Clark and said Benjamin C. Clark and Company, in said district court for the district of New Hampshire, and by said misrepresentations fraudulently induced said district court of the district of New Hampshire to appoint this defendant assignee, as aforesaid; but he does not believe that said complainant was ever so informed by any one, or that said complainant believes all, or any, of said charges, and he prays that said complainant may be required to make proof thereof.

And this defendant further answering, utterly denies that he has at any time, for the purposes aforesaid or for any purposes, conspired or confederated with said Charles H. Dougherty, Michael Dougherty, John L. Hayes, J. Hopkins Stewart, or any or either of them, to consummate any design in regard to said complainant or said award, or any other matter or thing charged in said bill or otherwise. And he believes, and therefore says, that neither of said persons, or any of them, confederated or conspired in the manner, and for the purpose, charged in said bill, or with any other person or persons, for any of the purposes charged in said bill.

And this defendant further answering, says that he utterly denies that, as a further means of consummating his or their said designs, or for any other purpose, this defendant, with said Charles H. Dougherty, Michael Dougherty, John L. Hayes and J. Hopkins Stewart, or any or either of them, caused said original proceedings, in the circuit court of the United States for the District of Columbia, to be commenced in the name of said Benjamin C. Clark; and he further says, that at the time of commencing said proceedings in said circuit court, this defendant

had never seen, or heard of, said Benjamin C. Clark, or said Ferdinand N. Clark, or said Joseph Hopkins Stewart, or said Michael Dougherty, or said Charles H. Dougherty; and said proceedings were commenced without the agency or knowledge of this defendant, but, as he believes, and therefore says, for a proper and legal object by creditors of said complainant. And this defendant denies that said Charles H. Dougherty and Michael Dougherty, one or either of them, now have, or ever have had, any connection or correspondence with this defendant in or about originating or carrying on said suit in chancery against said complainant, or that they or either of them have proved, or attempted to prove, any claim against said complainant's estate in bankruptcy, or have made any claim upon the fund appertaining to said case in bankruptcy, or in any other way have interfered with said suit or said fund, or made or set up any claim for their services in obtaining the same.

And this defendant further answering, says that he was appointed assignee of said Ferdinand N. Clark's estate in bankruptcy, on the 19th day of May, A. D. 1851; and he further says, that the first time he ever heard of said Ferdinand N. Clark, or his estate in bankruptcy, was in the month of May, 1851, some days prior to said May 19th, 1851, when he received a telegraphic despatch from William H. Gardiner, esq., counsellor-at-law, Boston, Massachusetts, inquiring in substance if the records of the United States district court for the district of New Hampshire indicated that one Ferdinand Clark had attempted to take the benefit of the bankrupt act? Having made the necessary examination, and answered this inquiry in the affirmative, and soon after, some of the Boston creditors of said Ferdinand N. Clark being informed of the death of John Palmer, the former assignee of said bankrupt, this defendant was, upon application to the district judge, sitting in bankruptcy as before stated, appointed assignee as aforesaid. This defendant being informed by the creditors of said Ferdinand N. Clark, that his proceedings in bankruptcy had been fraudulent, and that he was about to receive from the Treasury of the United States a large sum of money, which of right, and according to law, belonged to his creditors, and having so far investigated the matter as to become satisfied of the truth of the statement of said creditors, this defendant accepted the trust of assignee, and instituted in the United States circuit court for the District of Columbia the bill in chancery before named, and prosecuted the same to final determination and decree; and he says that he never saw or had any correspondence with said Charles H. Dougherty, or said Michael Dougherty; nor did ever hear of them, or either of them, until they were joined with this defendant in a bill of chancery, which this complainant brought in this

court for the same alleged cause for which this bill is brought, and against said Benjamin C. Clark, John Clark, John L. Hayes, Joseph Hopkins Stewart, Michael Dougherty and Charles H. Dougherty and William H. Y. Hackett, early in the year A. D. 1856, and by this court dismissed at its Oct'r term, 1856.

And this defendant further answering, says that he has long known said John L. Hayes, who for a long time was an attorney and counsellor-at-law, practicing in the city of Portsmouth, New Hampshire, where this defendant then and now resides; and that during said time, said John L. Hayes was, for several years, clerk of the United States district court for the district of New Hampshire; and that said John L. Hayes, about ten years ago, removed from said Portsmouth to the city of Washington, in the District of Columbia, where he has ever since resided—engaged to some extent in the practice of his profession as a lawyer. This defendant during the last ten years has seldom seen or held correspondence with said John L. Hayes, but soon after this defendant instituted his bill in chancery against said complainant, in the circuit court of the United States for the District of Columbia, the said John L. Hayes called upon this defendant at said Portsmouth, and in substance informed him that he, with others, was counsel for said complainant in said suit; that he, in conjunction with his associates, was clearly of the opinion that the complainant could and would make a good defence to the said suit of this defendant; and he then and there notified this defendant that he and his associates were further of the opinion, that in the result of a successful defence on the part of said complainant, this defendant would he liable, not only for the interest of the fund detained in the Treasury of the United States at the suit of this defendant, but for all damages and costs. And the said Hayes, then and there, as the attorney for the said complainant, notified this defendant that such a claim would be made and enforced against this defendant if said complainant prevailed in his defence. Soon after this notice, and in consequence of it, this defendant proposed to said Ferdinand N. Clark, through his counsel, the said John L. Hayes, to unite and withdraw the fund in litigation from the Treasury of the United States, with a view to its being placed by mutual agreement at interest. This proposition the said Ferdinand N. Clark, through John L. Hayes, his attorney, declined, and, as said Hayes informed this defendant, against the advice of said Ferdinand N. Clark's counsel. To the best of the recollection, and in the belief of this defendant, no other negotiation, consultation or suggestion in reference to said suit or said fund, or said Hayes's connection therewith or doings therein, or relation thereto, ever oc-

curred between said Hayes and this defendant, from the time he first heard of said Ferdinand N. Clark, until the final determination of said suit in the Supreme Court of the United States.

And this defendant further answering, says that he does not know, and to his knowledge never saw said Joseph Hopkins Stewart, nor did he ever hear of said Stewart until his name was brought to the notice of this defendant in the record of his said suit in chancery against this complainant, and that no correspondence, within the recollection or within the belief of this defendant, ever took place between said Stewart or any person in his name, or on his behalf, and this defendant, in relation to said John L. Hayes, said Charles H. Dougherty or Michael Dougherty, or any or either of them, or any other person, in regard to said Hayes, or his being employed as counsel for said complainant, or in regard to instituting any suit or proceedings by this defendant or said Benjamin C. Clark, or any other person, against said complainant.

And this defendant further answering, denies that said John L. Hayes, Joseph Hopkins Stewart, Charles H. Dougherty or Michael Dougherty, or any or either of them, caused this defendant, as assignee as aforesaid, to present his said bill in chancery, in the month of June, A. D. 1851, in said circuit court for the District of Columbia, or to become party complainant in said suit, but he says that he presented and prosecuted his said bill and suit in said court of his own motion, and in accordance with the advice of his counsel, in the lawful exercise of the rights, and in performance of the duties, of assignee as aforesaid, to obtain said fund awarded as aforesaid, which said complainant was then fraudulently withholding from his creditors.

And he utterly denies all and singular, that as a more sure and effectual means of coming at and consummating the said purposes and designs of said conspirators, one of them, to wit, John L. Hayes, attorney-at-law, duly licensed to practice in the circuit court of the United States, or any other person or persons named or not named, or acting in pursuance of the previous plans of said conspirators, offered his professional services and skill to said complainant, to act for him and his interest in the management and conduct of his defence to the bills of said Benjamin C. Clark, and this defendant, against said complainant, in said circuit court of the United States for the District of Columbia, or that this defendant had any knowledge of or agency in the arrangement by which said Hayes or any other person acted, or undertook to act, in this or any other matter, as the counsel of said complainant.

And this defendant further answering, says that he does

not know, and cannot answer upon his knowledge or information, whether said complainant was ignorant of the real designs and purposes of said John L. Hayes and said conspirators, if he or they had any such designs as charged, [which this defendant denies,] or whether, confiding in the said Hayes's skill and integrity, said complainant did or did not employ said Hayes, or confided to, or charged him with the whole duty of getting up and preparing the defence to said suits in said circuit court; but this defendant says, that in taking the testimony in support of his said suit in said circuit court against said complainant, the Honorable Rufus Choate and Joseph M. Bell generally, if not uniformly, acted as the counsel of said complainant, and he has been informed and believes, and therefore says, that said Choate and Bell, of Boston, the late Alexander H. Lawrence, and Mr. Bradley of Washington, were engaged with said John L. Hayes as counsel for said complainant in defending this defendant's said suit, but he does not know, and cannot answer, how the duties of said defence were divided to and between said counsel for the complainant, and prays that he may be required to make proof thereof. This defendant admits that said Hayes acted as one of the counsel of said complainant in defending this defendant's said suit against said complainant, but whether said Hayes offered his said services to said complainant, or to what extent said complainant gave to said Hayes his confidence, or how, or upon what terms he employed him, or to what extent he charged him with the preparation of said defence, this defendant does not know, and cannot set forth; but this defendant has been informed and believes, and therefore says, that the compensation of said John L. Hayes for his labor and services did depend, and were agreed to depend, mainly, if not entirely, upon his success in defeating this defendant's said suit against said complainant, and that by reason of said decision against said complainant, the said Hayes has not received, and is not likely to receive compensation for his said services in said suit.

And this defendant, further answering, denies that said John L. Hayes, during the whole or any part of the time he was preparing, or pretending to prepare, or to act for said complainant's interest in the defence of said suit, was untrue to said complainant's interest, or that he so aided and assisted the adverse party by keeping out, contrary to the instructions of said complainant, or otherwise, certain material evidence, or matters of defence, or otherwise, so that said circuit court decreed said case according to the prayer of the bill originally filed by said Benjamin C. Clark, in which this defendant afterwards became complainant as aforesaid, or otherwise. This defendant admits that circuit court decided said case against said com-

plainant, but he says it was so decided by reason of the frauds of said complainant in his proceedings in and about his said case in bankruptcy, and in and about said claim against said Mexican republic, and not because said Hayes, or any other counsel of said complainant, or any other person, were untrue to said complainant. And this defendant further says, that said Hayes was true and faithful to said complainant, and was diligent and faithful in getting up and conducting the defence of said complainant to the defendant's said suit in said circuit court, and used his utmost exertions to procure a decision of said suit in favor of said complainant, and against this defendant.

And this defendant further answering, says that he does not know, and cannot answer upon his knowledge or information, whether said complainant put into the hands and possession of said Hayes certain evidences of indebtedness of said Benjamin C. Clark to said complainant, or if said indebtedness, if any there were, had accrued since the rendition, in and by said superior court of the city, county and State of New York, of the judgment before set forth against said complainant, and in favor of said Benjamin C. Clark, or whether said debts consisted of two certain valid claims among other things of said complainant, or whether one of said claims was against the Ocean Insurance Company, of said Boston, for the loss of the bark "Two Friends" and her cargo of salt, or otherwise, or whether said claims amounted together to fourteen thousand six hundred and sixty dollars, or any other; and if any other, what sum with interest up to May 14th, 1851, amounting to twenty-nine thousand three hundred twenty-nine dollars twenty-eight cents; or whether said last named claim was pending in the supreme judicial court, holden at said Boston, on and before the twenty-fourth day of June, 1842, in behalf of said complainant, or whether the same was managed and controlled as agent and attorney by said Benjamin C. Clark, or whether said Benjamin C. Clark was instructed by said complainant to prosecute said claim to the end, with or without any authority whatever to compromise said claim; or whether said complainant believes, or has reason to believe, that said Benjamin C. Clark, at the time and a long time after said last named claim was so made for loss of said bark "Two Friends," and her cargo of salt, was a large or small stockholder, or whether he were in point of fact at that time, or at any other time, a large or small stockholder in the said Ocean Insurance Company; or whether said complainant holds said Benjamin C. Clark liable for said claim, or any claim against said Ocean Insurance Company, because he had fraudulently or otherwise settled said claim, or other claim, and whether he so holds it to the damage of the said complainant in

the sum of twenty-nine thousand three hundred twenty-nine dollars twenty-eight cents, or any other sum.

And this defendant further answering, says that if any such claim or claims were put into the hands of said Hayes, he, in conjunction with his said associate counsel for said complainant in said defence, acted in accordance with his and their duty in withholding them from said case, and that said claims, even if well founded in fact and in law, which this defendant denies, were no answer and were not admissible as such, nor did they tend to prove an answer to this defendant's said suit in chancery, in said circuit court of the United States for the District of Columbia, against said complainant for his alleged fraud in his said bankruptcy.

And this defendant further answering, says that he does not know, and cannot answer upon his knowledge or information, whether said complainant put into the hands of said John L. Hayes another claim, and against one Charles W. Cartwright and one Enoch Train, of said Boston, and assignees of J. & C. Flint & Co., of said Boston, for one-half of brig "Charles" and her earning, amounting, principal and interest, up to May 14, A. D. 1851, to ten thousand four hundred forty-five dollars and twelve cents, or any other; and if any other, what sum, or whether said claim was pending in the supreme judicial court, holden at Boston, or elsewhere, on or before the 24th day of June, A. D. 1842, in behalf of said complainant; or whether managed or controlled, as agent or attorney, by said Benjamin C. Clark, or whether said Benjamin C. Clark was or not instructed by said complainant to prosecute said claim to the end, without any authority to compromise said claim; or whether said complainant believes, or whether, in point of fact, said Benjamin C. Clark has received and settled said complainant's last named claim against said Charles W. Cartwright and said Enoch Train; or whether, if said claim were settled, said complainant were then entitled to receive the same from said Benjamin C. Clark; and, if so entitled, whether the sum were ten thousand four hundred forty-five dollars and twelve cents, or any other, and if any, what other sum; or whether said complainant, in due season, distinctly instructed or directed said Hayes to file or present the same, with other evidences of said Benjamin C. Clark's indebtedness, on the hearing or trial of the said last named cause. But this defendant says that if any such claims, evidences or papers were put into the hands of said John L. Hayes, with such instructions as are alleged as aforesaid, the said Hayes, in conjunction with his associate counsel, acted with fidelity to said complainant in withholding said several claims, evidences and papers from said case; and that said claims, even if well founded in law and fact, which this defendant denies, were no answer,

and were not admissible as a defence in and to this defendant's said suit in chancery aforesaid, against said complainant; and for greater certainty in the premises, and to the end that this honorable court may see the nature of said Benjamin C. Clark's said suit in chancery, in said circuit court of the United States for the District of Columbia, and of this defendant's said suit in the same court, against said complainant, the proofs and proceedings therein, this defendant craves leave to exhibit to this honorable court the record of the proceedings in both of said suits in said circuit court.

And that the court may see for what other parties and persons, besides said Benjamin C. Clark and said Charles G. Nazro, said suit was instituted and carried on by this defendant, as assignee as aforesaid, he annexes hereto, marked "A," a schedule of the names of the creditors of said complainant who have proved their claims against said complainant in bankruptcy, with the amount of debts, as proved, set against their several and respective names, and prays that said schedule may be taken *and* a part of this answer.

And this defendant denies that said Hays fraudulently and designedly neglected to present said several claims to the court in said suit, or to set them up as a defence thereto, or to use them, so far as they could be properly used, in said suit; but he says that said Hayes, if any such claims or evidence were put in his hands, in conjunction with the other counsel, before named and associated with him in said defence, withheld the same from said case in the sound and lawful exercise of his and their discretion in said premises, as counsel for said complainant in said suit, and with no fraudulent intent whatever.

And this defendant further answering, says that he does not know, and cannot answer, upon his own knowledge or information, whether said complainant was or not ignorant of the aforesaid fraudulent acts and omissions, and conspiracies of the parties aforesaid, until after the decree of the said Supreme Court of the United States affirming the decision of said circuit court; but this defendant believes, and therefore says, that said complainant was knowing, at the time, of everything done or omitted in preparing and arguing said cause, and to all the incidents thereof, as they took place; and this defendant prays that said complainant may be required to make proof of the time and manner when and how he discovered said several and respective alleged frauds, conspiracies and confederacies.

And this defendant further answering, says he has been informed, and believes, and therefore says, that on the 28th of January, 1843, said complainant did owe said Benjamin C. Clark and Charles G. Nazro, as co-partners under the firm of Benjamin C. Clark and Company, and ever since has owed, and

now owes unto them, the sum of nine hundred and seventy dollars and twenty-six cents, and this defendant admits that said Benjamin C. Clark and said Charles G. Nazro, and said John Clark, are all citizens of the State of Massachusetts, and that Charles H. Dougherty and Michael Dougherty, and said Joseph Hopkins Stewart, are all citizens of the State of New York.

And this defendant utterly denies that he has confederated, conspired or combined with any person or persons, whether named or not named in said complainant's said bill, in any way to defraud, injure or prejudice said complainant, or to deprive him of said award, or any part thereof, or to influence the conduct of any person or persons retained or to be retained as counsel for said complainant, in any or either of said suits, or in any other matter whatever.

And this defendant further denies all unlawful combination and confederacy in the said bill charged, without that, that any other matter or thing material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or in the belief of this defendant.

All which matters and things this defendant is ready to aver, maintain and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges, in that behalf most wrongfully sustained.

W. H. Y. HACKETT.

WILLIAM H. HACKETT,
Solicitor for the Defendant.

DISTRICT OF NEW HAMPSHIRE, ss.

On this fifteen day of August, A. D. 1857, came before me William H. Y. Hackett, above named, and made oath that the facts alleged in the foregoing answer, so far as they are alleged to be of his own knowledge, are true, and so far as they are alleged to be of his information or belief, he believes them to be true.

ALBERT R. HATCH,
Clerk & Comm'r Cir. Ct. U. S. for N. H.

Schedule "A."

Schedule of the creditors of said Ferdinand N. Clark who have proved their claims in bankruptcy, against his estate, with the amount of their respective debts annexed to their several names.

John Lilley, account,	$19,701 00
David Barclay, judgment,	11,444 54
Matthew B. Vennard, account,	548 30

Charles Stanton, judgment,	3,564	64
Benjamin G. Davenport, account,	2,057	03
B. C. Clark & Co., account,	970	26
B. C. Clark, judgment,	21,064	33
Wm. C. Pickersgill, judgments,	8,223	75
Ebenezer W. Stone, contract,	1,109	69
B. Homer Dixon,	473	75
Juan de la Camera, judgment,	5,486	38
John G. Bailey, judgment,	7,166	09
Stephen D. Glover and Jas. McMurray, judgment,	1,557	77
Do. do. do.	1,577	77
Stephen E. Glover, judgment,	9,504	53
	$94,439	83

W. H. Y. HACKETT.

WILLIAM H. HACKETT, *Solicitor*.

And on the third day of October, A. D. 1857, is filed—

The Replication of Ferdinand N. Clark, Complainant, to the Answer of William H. Y. Hackett, Defendant.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiences of the said answer, for replication thereto, saith that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by this repliant: without this, that any other matter or thing whatsoever, in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

FERDINAND N. CLARK.

And on the first day of March, A. D. 1858, the said Hackett amends his answer filed in the above entitled suit, as follows, that is to say:

"And this defendant further answering, says that in and by the eighth section of the act of the Congress of the United States, entitled 'An act to establish a uniform system of bankruptcy throughout the United States,' approved August 19, 1841, 'it is among other things provided,' that no suit at law or in equity shall in any case be maintainable by or against such assignee, or by or against any person claiming an adverse interest touching the property or rights of property aforesaid, in any

court whatever, unless the same shall be brought within two years after the declaration and decree of bankruptcy, or after the cause of suit shall first have accrued.

And this defendant insists upon said statute and claims the same benefit as if he had pleaded the same."

W. H. Y. HACKETT.

WILLIAM H. HACKETT, *Solicitor for Deft.*

Circuit Court of the United States—New Hampshire, ss.

May 8, 1858.

Then the said William H. Y. Hackett made oath that the foregoing amendment by him subscribed is just and true.

Before me, ALBERT R. HATCH, *Clerk.*

And now, at this October term, A. D. 1859, this cause having been continued from term to term, to this term, comes on for hearing upon the bill, answer, replication and the proofs and exhibits filed in the cause, which being considered with the arguments and allegations of the counsel, as well of the complainant as the defendant, it is adjudged and decreed by the court that the complainant's bill be dismissed with costs, taxed at $

Whereupon the complainant claims an appeal at the Supreme Court of the United States, next to be holden at Washington, on the first Monday of December next, which appeal is granted on condition that the complainant within ten days file a bond with sufficient sureties, in the sum of $500, to be approved by the clerk, to prosecute his appeal with effect, and to pay all such damages and costs as may be awarded and adjudged against him.

And said bond is on the 17th day of October, A. D. 1859, filed as follows:

Circuit Court of the United States, for the circuit and district of New Hampshire.

Know all men by these presents, that we, Ferdinand N. Clark, of Roxbury, and George W. Frothingham and Daniel Lewis, of Roxbury, all in the State of Massachusetts, are held and firmly bound unto Wm. H. Y. Hackett, of Portsmouth, in the State of New Hampshire, in the sum of five hundred dollars, to be paid to the said William H. Y. Hackett, his executors and administrators; to which payment, well and truly to be made, we bind ourselves and each of us jointly and severally, and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals and dated this tenth day of October, A. D. 1859.

The condition of this obligation is such, that whereas the circuit court of the United States for the circuit and district of New Hampshire, on the eighth day of October, instant, rendered a final decree, dismissing the bill in equity pending in said court, wherein said Ferdinand N. Clark was complainant, and said Wm. H. Y. Hackett defendant, and whereas the said Ferdinand N. Clark has claimed

an appeal from said final decree to the Supreme Court of the United States, next to be holden at Washington, on the first Monday of December next:

Now, therefore, if the above named Ferdinand N. Clark shall prosecute his said appeal to effect, and shall answer all damages and costs if he fail to make good his plea, then this obligation shall be void, otherwise the same shall remain in full force and virtue.

FERDINAND N. CLARK. [L. S.]
GEORGE W. FROTHINGHAM. [L. S.]
DAN'L LEWIS. [L. S.]

Executed and delivered in presence of—
WM. G. CLARK, to F. N. C.
J. P. CLARK, to G. W. F.
CHAS. T. WOOD.

Oct. 17th, 1859.

Approved: ALBERT R. HATCH, *Clerk*.

I, Albert R. Hatch, clerk of the circuit court of the United States for the district of New Hampshire, do certify, that the foregoing is a copy of the bill, answer, replication and proceedings of the court, in the suit above entitled.

Witness my hand and the seal of said court, the second day of [SEAL.] December, A. D. 1859.

ALBEBT R. HATCH, *Clerk*.

UNITED STATES OF AMERICA.

U. S. Circuit Court for the district of New Hampshire.

FERDINAND N. CLARK
vs.
WILLIAM H. Y. HACKETT.

Interrogatories to be proposed to Isaac Clark, of Boston, in the county of Suffolk, and State of Massachusetts, to be examined on behalf of the plaintiff in the above entitled action.

1st. What is your age, name, occupation, and place of residence?

2d. Have you in your possession a coppy of the printed record of the proceedings in the circuit court of the United States for the District of Columbia, in the suits of Benjamin C. Clark and William H. Y. Hackett, against Ferdinand N. Clark? If you have, please examine the same, and state if, of your own knowledge and belief, the said printed record contains a full and perfect transcript of the proceedings in said suits in the said circuit court for the District of Columbia. State particularly whether or not there are any discrepancies in said printed record; and if so, what they are.

3d. Have you in your possession a paper purporting to be an amendment of the record in said suits, No. 32, December term, 1854,

in the United States Supreme Court? And if so, please state fully and particularly when and where you first saw it, and under what circumstances; and whether or not the same was used in the trial of the said suits in the Supreme Court of the United States.

4th. Have you in your possession a printed copy of the brief made by A. H. Lawrence, and used in the trial of the before named suits? If you have, please examine the same, and state of your own knowledge, whether or not the said Ferdinand N. Clark seasonably directed the said A. H. Lawrence and other counsel not to use said brief in the trial of the case. And please state, of your own knowledge, whether or not said brief was used in the trial of said case. Please state all you know concerning the said brief fully and at large.

5th. Have you in your possession the certified copy of a letter written by Albert R. Hatch to the Secretary of the United States Treasury, dated Portsmouth, N. H., May 16, 1851? If so, please annex the same, and state whether or not you ever had any conversation about the said letter with the said Albert R. Hatch; and if so, when, where, and what was the conversation?

6th. Have you in your possession a certified copy of a judgment in favor of Benjamin C. Clark, and against the said Ferdinand N. Clark, for $25,453 28, obtained in the superior courts of New York city, rendered June 24th, 1842? If so, please state fully and specifically all you know about said judgment; and please state whether [or] not you have in your possession a letter from Joseph Hopkins Stewart to Benjamin C. Clark, dated New York, June 23, 1842; if yea, please annex the said letter and copy of said judgment, and state whether or not you know it, the signature to the letter, to be his signature. Please state, according to your best knowledge and belief, when the said Ferdinand N. Clark first saw a copy of said judgment, and when did you first see the same?

7th. Have you in your possession a certificate from the Comptroller of the Treasury of the United States, of the several injunctions in the matter of the award to said Ferdinand N. Clark, June 14, 1851? If so, please state whether or not the name of Charles H. Dougherty is mentioned therein; and if yea, please state, of your own knowledge, if it is the same individual who delivered to James H. Caustin the several letters attached to said Caustin's deposition, contained in the said printed record, pages 110, 111, and 112.

8th. Have you in your possession a certificate of P. R. Fendall, of the bonds in the case of injunctions on the award to said Ferdinand N. Clark up to July 3d, 1852? If you have, please annex the same to your deposition, and state if you know the signature to be that of the said P. R. Fendall. And please state what you know of the parties certified to have filed their bonds with said Fendall. And please state, of your own knowledge, if said Fen-

dall was, or was not, at the time, district attorney for the District of Columbia.

9th. Please examine the account of B. C. Clark & Company with F. Clark & Company, formerly of Havana, dated May 5, 1851, as it appears in the said printed record, pages 48, 49 and 50, and state fully and particularly all you know about said account; and whether or not, of your knowledge or belief, said B. C. Clark & Co. were, on the 5th and 21st days of May, 1851, debtors to the said F. Clark & Co., and said F. N. Clark.

10th. Have you a copy of the circular of Ferdinand Clark and James Norman, announcing the dissolution of the co-partnership of F. Clark & Company? If so, please annex the same, and state if the copies of the same were sent to B. C. Clark & Co., and correspondents generally. And please state if, at the time of the dissolution of the firm of F. Clark & Co., they were solvent or not.

11th. Do you or not know of B. C. Clark's being in Havana, in the island of Cuba, in December, 1837? And were or not the said Ferdinand N. Clark and James Norman then in mercantile business? And what was their standing?

12th. Have you in your possession a copy of the account of F. N. Clark against B. C. Clark, filed in the circuit court for the district of New Hampshire in this suit? If yea, please annex the same to your deposition, and state particularly and fully whether or not, of your knowledge, said B. C. Clark and B. C. Clark & Co. was indebted to said F. N. Clark on the 28th day of January, A. D. 1843.

13th. Have you in your possession a letter from B. C. Clark to said F. N. Clark at Havana, dated New Orleans, January 4, 1838? And have you in your said possession another letter of said B. C. Clark to said F. N. Clark, dated Boston, February 12, 1838? If you have said letters, or either of them, please annex the same to your deposition. And please state if the same are in the handwriting of the said B. C. Clark, or are signed by him.

14th. Do you know whether or not the drafts alluded to in the letter from B. C. Clark to F. N. Clark, under date of January 4, 1838, were paid to said B. C. Clark for account of said F. N. Clark?

15th. Have you in your possession two letters from B. C. Clark to said Ferdinand Clark, one dated July 15th, 1830, and the other April 28th, 1831? If so, please annex the same to your deposition, and state if you know the signatures to them to be that of said B. C. Clark. And state, if it does or does not allude to shipments of coffee from Havana by said F. N. Clark to John Clark of New Orleans, the brother of said B. C. Clark, under the guarantee of said B. C. Clark. And please state whether or not you received the accounts for the said shipments against the said B. C. Clark, with orders to collect the same for the credit of Ferdinand Clark, prior to the date of the said B. C. Clark's letter of July 15, 1830.

16th. Have you an agreement between B. C. Clark and Ferdinand Clark, dated October 11th, 1826, in your possession? If so, please annex the same, and say whether or not, of your own knowledge, the signature thereto are genuine. And please state all you know concerning said agreement.

17th. Have you in your possession any letters under the signature of John Clark, the brother of B. C. Clark, addressed to Ferdinand Clark, or to yourself, relating to business transactions between the said John Clark or the said B. C. Clark and the said Ferdinand Clark, or yourself? If so, please annex the same to your deposition.

18th. Have you in your possession a copy of the schedule of the creditors and of the assets of said John Clark, filed in bankruptcy in the district court of the United States for the district of Massachusetts, in February, A. D. 1842? If so, please annex the same to your deposition, and state whether or not the said Ferdinand Clark is represented as a creditor of the said John Clark's estate therein; if yea, please state, of your own knowledge, whether or not said indebtedness is the same alluded to in the said B. C. Clark's letter of July 15, 1830, aforesaid. Please state particularly all you know about the same, and about said John Clark's bankruptcy.

19th. Were or not the said John Clark and the said Ferdinand N. Clark both in the city of Boston, to your knowledge, some time in the summer of the year 1829, and did or not the said John Clark have conversation with you at that time about his business responsibility, and the manner in which he proposed to conduct his then future transactions with the said B. C. Clark, Ferdinand Clark, and yourself, at New Orleans? If so, please state particularly.

20th. Whether or not, of your own knowledge, the said B. C. Clark trusteed certain funds in the hands of Caldwell & Trufant, and of Peter Laidlaw, both of New Orleans, belonging to the said Ferdinand Clark? Please state all you know in relation to the same, and if you ever had any conversations about the said matter soon after the said funds were trusteed with said B. C. Clark. Please state the substance of the same, and what was the result of said suits.

21st. Did or did not, to your own knowledge, the said B. C. Clark and one John Preston sign a bail bond for said Ferdinand Clark in a suit commenced against him by Messrs. Baring Brothers & Co., of London, for three thousand pounds sterling? If yea, please state, of your own knowledge, whether or not said suit originated from the indebtedness of P. & C. Flint & Co., of Boston, to said Baring Brothers & Co., and when was it?

22d. Have you in your possession a letter from said John Preston to Ferdinand Clark, dated June 9, 1838, in relation to said bond? If so, please annex the same to your deposition, and say if

the signature is that of the said John Preston, and whether or not the said John Preston is living, and whether or not he was related to the said B. C. Clark; and if so, what the relation was.

23d. Have you a certified copy of the bond and of the execution, with the endorsements thereon, in the case of Baring Brothers & Co. against said Ferdinand Clark? If so, please annex the same to your deposition.

24th. Have you a letter of John A. Smith, clerk of the U. S. circuit court, District of Columbia, dated September 14, 1855? If so, please annex the same, and say if you know the signature to be his.

25th. Have you any letters from Major F. T. Lally to said Ferdinand N. Clark in your possession? If so, please annex the same to your deposition, and state, of your own knowledge, whether or not said Lally and one James S. Thayer were the agents of said F. N. Clark, who prosecuted his claim before the board of commissioners on Mexican claims.

26th. Have you in your possession a certified copy of the petition filed by said Lally and Thayer, June 16, 1851, in the U. S. circuit court for the District of Columbia? If so, please annex the same to your deposition, and state if the original petition is or not now on file in said court; state all you know about it.

27th. Have you in your possession a letter written by Charles H. Dougherty to yourself, dated Dec. 27, 1850? If so, please annex the same to your deposition, and please say if the signature thereto is, to your knowledge, true.

28th. Have you in your possession an agreement between A. H. Lawrence and John L. Hayes and said F. N. Clark, dated April 16, 1852? If you have, please annex the same, and say whether or not you witnessed said agreement, and whether or not said agreement was the last agreement made between said parties.

29th. Have you in your possession a letter dated September 28, 1841, from John S. Tyler to said F. N. Clark? If so, please annex the same to your deposition, and state if you know his signature to be true; and state if the claim therein referred to against the Ocean Insurance Company for the loss of the barque Two Friends and her cargo, amounting to $14,661, was or was not settled and compromised by the said B. C. Clark; and if yea, had he or not authority to do so; and whether or not the same was done without the knowledge or consent of the said F. N. Clark; and state, of your own knowledge and belief, if said claim was or was not a good and valid claim for a total loss upon said company, and whether or not the said B. C. Clark and said John Preston were large stockholders in said Ocean Insurance Company at the time said loss occurred. State all you know in and about the premises, fully and specifically.

30th. Have you a printed copy of the treaty with Mexico, of 2d Feb'y, 1848, and act of Congress of 3d March, 1849, such as was used before the board of commissioners on Mexican claims? If so, please annex the same.

31st. Have you in your possession a letter from Charles H. Dougherty to F. N. Clark, dated April 28, 1851? If so, please annex the same to your deposition. Please state fully and particularly all you know about said letter, and whether or not a form of a power of attorney for said F. N. Clark to sign accompanied the same; and state, if you know, who was the bearer of said letter and power of att'y from New York; and please state if the said power of attorney is in the handwriting of Charles H. Dougherty.

32d. Did or did not the said Charles H. Dougherty conspire with one J. Hopkins Stewart, of New York city, and Michael Dougherty, his father, and said B. C. Clark and others, to defraud the said F. N. Clark of his award, by getting up fraudulent suits at Washington? And state all you know concerning said conspiracy; and if you have any letters in connection with the same, please annex the same to your deposition.

33d. Please annex to your deposition the letter of Jose Julian Aguerre to Chester Judson, dated July 28, 1841, if you have the same in your possession; and please state whether or not said Auguerre acted as the agent for said F. N. Clark's house in his absence, and whether or not the signatures of said Aguerre and Judson are genuine and well known to you; and please state if, at the date of said letter, said F. N. Clark's mercantile standing was or was not considered good in Havana.

34th. Have you A. G. Beck's copy of Joseph H. Stewart's letter to John Granger, February 9, 1842? If so, please annex it to your deposition, and state if the original was in the possession of A. H. Lawrence at Washington, and also whether or not two original letters from said B. C. Clark to said F. N. Clark, dated June 30, 1842, were in the possession of said A. H. Lawrence; also please state whether or not there were in his, the said A. H. Lawrence's possession a certificate of Louisa Martha Stewart's, of 2d October, 1841, also in the handwriting of said Joseph H. Stewart, the defence of said F. N. Clark in the matter of John Granger, of New York; also original letter of A. G. Beck, dated March 5, 1842, to said F. N. Clark, and say what said Lawrence said in relation to any or all of said papers, if anything; and please annex any copies of said papers in your possession.

35th. Have you a copy of B. C. Clark's receipt for vouchers, documents, &c., belonging to said F. N. Clark up to April 2d, 1834? If yea, please annex the same to your deposition, and state if the original was filed in the district court for New Hampshire in bankruptcy.

36th. Have you in your possession a certified copy of the answer of said B. C. Clark to F. N. Clark's bill of complaint against said B. C. Clark, William H. Y. Hackett, and others, filed in the U. S. circuit court for the district of New Hampshire, August 6, 1856? If yea, please annex the same, and please state how it came to be dated 1851, and to be certified by A. R. Hatch without a date. Please state fully all the particulars concerning the same.

37th. Please examine said answer of said B. C. Clark, and state, of your own knowledge, if what he, said B. C. Clark, says therein about a certain superior court judgment of New York city for $25,453 28 being obtained and founded on a bail bond, which he therein says he signed while said F. N. Clark was under arrest, and that the said F. N. Clark absconded from the United States, is true or not. Have you in your possession any letters of B. C. Clark's concerning the alleged absconding of said F. N. Clark, whether written to you or any other person? If yea, please annex the same to your deposition. Did you or not have any personal conversation with the said B. C. Clark about the departure of said F. N. Clark from the United States about that time? If so, please state the same fully.

38th. Have you in your possession a copy of an agreement drawn up to be signed by the assignees of P. & C. Flint and Co., and Ferdinand Clark? If so, please annex the same to your deposition, and state the reasons why the same was not signed; state fully all you know about the matter.

39th. Have you in your possession an affidavit of George and Justus Clark concerning the collection of $9,000, or thereabouts, by J. Hopkins Stewart for said F. N. Clark, dated October 14, A. D. 1842? If yea, please annex the same to your deposition, and state whether or not said George and Justus are living.

40th. Have you in your possession copies of the bill filed June 19, 1855, by said William H. Y. Hackett in the United States district court for New Hampshire against said F. N. Clark, and the answer of the said F. N. Clark thereto, and of the judgment rendered thereon in said court? If yea, please annex the same to your deposition, and state whether or not his Honor Judge Curtis, in the U. S. circuit court for said district of New Hampshire, in October, 1856, gave his decision adverse to said bill.

41st. Have you in your possession an order of P. & C. Flint & Co., dated February, 1834, on said Ferdinand Clark for three thousand pounds sterling in favor of Baring Brothers & Co., or T. W. Ward? If yea, please annex the same to your deposition; and please state, of your own knowledge, whether or not the said order was given subsequently to the failure of said P. & C. Flint & Co.

42d. Whether or not were you in the city of New York in the month of July, A. D. 1841? If yea, please state whether or not the said Ferdinand N. Clark arrived at said New York city from Havana during the same month; if yea, what was the state of his

health upon his arrival at New York; and whether or not the said Joseph Hopkins Stewart endeavored to gain the confidence of said F. N. Clark; and whether or not said J. H. Stewart recommended said F. N. Clark to permit him, the said Stewart, to proceed to Boston for the purpose of getting a settlement between said F. N. Clark and B. C. Clark, and his brother, John Clark; and whether or not did said Stewart proceed to Boston; and if yea, whether or not was he successful in effecting such settlement. Did you or not have a conversation with the said Stewart upon his return to New York; and did he or not in such conversation say that he had advised B. C. Clark to commence a suit in New York against the said F. N. Clark? And please state fully all he said at any such conversation.

43d. Whether or not was a suit commenced in New York after the return of said Stewart from Boston by B. C. Clark against said F. N. Clark; and whether or not was said Stewart employed to defend the same; and whether or not was the said Stewart put in possession of a large amount of funds to defend the same? Please state all you know about it.

44th. Whether or not were you in the city of New York in the winter, spring, and summer of the year 1842, acting in behalf of said Ferdinand N. Clark; and whether or not was said Ferdinand N. Clark in said city of New York on or about the 24th June, 1842? If yea, please state on what day in said June he left said New York, and whether or not he went from there to Boston, and whether or not he told you his object in going to Boston? If yea, please state the same fully; and please state what had been the state of the said F. N. Clark's health from the time of his arrival from Havana to that time.

45th. Whether or not to your knowledge the said F. N. Clark was notified by said Stewart or B. C. Clark of the existence of said judgment prior to the 15th day of May, A. D. 1851, to wit, the judgment obtained by B. C. Clark in the superior court of the city of New York against said F. N. Clark of June 24 (29) 1842, for $25,453 28?

46th. What was the general conduct of the said Joseph Hopkins Stewart, as attorney and counsellor for said F. N. Clark, from July, 1841, to the end of June, 1842? State particularly all within your knowledge upon the subject.

47th. Whether or not has the said J. H. Stewart been the means of causing other suits to be brought against the said F. N. Clark prior [to] July, 1842, and since then? If yea, please state all you know about it, and whether or not the same was done to oppress the said F. N. Clark; and whether or not the said J. H. Stewart has, since the said award to said F. N. Clark of May, 1851, employed agents to influence the said F. N. Clark to compromise with him, said Stewart, and allow him a part of said award; and

whether or not the said Stewart has written to the same purport to yourself or others? If yea, please state fully all you know about it, and annex any letters of his or his agents in your possession to your deposition.

48th. Have you in your possession a copy of an order of Hon. Judge Harvey, on the petition of William H. Y. Hackett, November 3, 1851, in the matter of F. N. Clark in bankruptcy, district court of New Hampshire? If so, please annex the same to your deposition, and state if the original petition of said Hackett is on file in said district court; and if not, have you any information from said Hackett, or any other person connected with these proceedings, of its whereabouts, and the contents thereof? Please state the same fully.

49th. Have you in your possession a printed copy of the record of the proceedings in equity in the U. S. circuit court and U. S. Supreme Court, of the suit of William H. Booth vs. Ferdinand N. Clark? If so, please annex the same to your deposition or a certified copy thereof.

50th. Are you acquainted with John L. Hayes, of Washington, D. C.; how long have you known him; and when and where did you first see him; and did he or did he not call upon you in Boston, some time in the month of September, A. D. 1851? If yea, please state *if* what conversation, if any, took place between you and said Hayes. And did you have any subsequent conversation with said Hayes in Boston? If so, please state when and what was said thereat.

51st. Was the said Hayes at that time engaged as counsel for said F. N. Clark, at Washington, in the suits of B. C. Clark and W. H. Y. Hackett and others, against said F. N. Clark; and was Rufus Choate, of Boston, at that time retained as counsel in the same suits; and whether or not said Choate had engaged to file the answers to said suits for said F. N. Clark; and whether or not said Hayes informed you that Mr. Choate had requested him (Hayes) to prepare the answers in said suits? if so, when; how long after the first interview? Please state what was said; and please state, of your own knowledge, all that said Hayes did in regard to said suits while in Boston.

52d. Whether or not the said Hayes, at an interview in September, 1851, informed you that the next term of the circuit court, at Washington, would be in October, and that he must be there on the first Monday in that month in order to file the answers and to get ready for trial during that term? Please state fully and particularly everything of your knowledge done by said Hayes as counsel for said F. N. Clark, in the managing of the said suits between the time he left Boston and the March term of the circuit court, in Washington, 1852. And please state what arrangement,

if any, was made to have the said suits tried at the said March term, 1852.

53d. Whether or not you went to Washington in the month of April, 1852, to see if positive arrangements could be made for trial of the cases, that term? If yea, please state when you went, and whether or not you saw the said Hayes in Washington; if so, what encouragement, if any, did he give you of being ready for trial at that term?

54th. Have you in your possession a letter from said Hayes to Rufus Choate, stating that he (Choate) could have from the tenth to the twentieth of May, 1852, to come on and try the said cases? If so, please annex the same, and say if you knew the signature to be true. And have you another letter from said Hayes, dated May 6, 1852, post-marked May the 9th, stating that Mr. Choate must be there on the 12th? If so, please annex the same to your deposition, and say if you know the signature; and please say whether or not, of your knowledge, Mr. Choate went on to Washington upon the receipt of said letter.

55th. Whether or not you was in Washington about the middle of June, 1852; and whether or not you called at that time upon said Hayes; and if said Hayes gave you a letter to the clerk of the circuit court, requesting him to show you all the papers in the said suits; if yea, have you the letter? If yea, please annex the same to your deposition.

56th. Whether or not you examined the papers on the files in the clerk's office of the circuit court, at Washington, in said June, 1852; and if so, whether or not you discovered an agreement of counsel on the files? And if so, please state fully what said agreement was; and whether or not at the same time you discovered a bill and answer, Lally & Thayer vs. F. N. Clark; and whether or not there was an auditor's report in the said case of Lally & Thayer vs. F. N. Clark; if so, please state what the auditor's report was.

57th. Whether or not you subsequently examined said files again; if so, when; and whether or not you discovered any of the papers to be missing which were there at your examination in June, 1852? If so, please state what papers were so missing, and give the substance of their contents, and say if you made inquiry for the same.

58th. Whether or not said Hayes was in Boston in the month of September or October, 1852; and whether or not did you make any effort to see him; and whether or not you succeeded in seeing him?

59th. Whether or not you went to Washington in the month of October, 1852; and whether or not, upon your arrival there, you met Mr. A. H. Lawrence in the street; and whether or not he in-

formed you he was going to Mr. Carlisle's office for the purpose of taking the deposition of J. H. Caustin to be used in said suits; and whether or not any further conversation occurred between you at that time; if so, what was it?

60th. Whether or not you received from this complainant, F. N. Clark, sundry court records, and other documents, to be used as evidence in the trial of said cause, while you were at Washington, in October, 1852; if yea, whether or not you gave the same to said A. H. Lawrence; if not, what did you do with the same? And please state fully what the same were, and annex them to your deposition, or copies of them, if in your possession.

61st. Whether or not the same were used as evidence in the trial of said cases? Please state fully what you know in relation thereto.

62d. Whether or not a statement, purporting to be the deposition of James H. Caustin, was used in the trial of said causes? If yea, please state if you examined the same; and if yea, state in whose handwriting the same is if you know.

63d. Whether or not were the suits of B. C. Clark and W. H. Y. Hackett against F. N. Clark, and of W. A. Booth against said F. N. Clark, tried in the circuit court of the United States for the District of Columbia, in November, 1852; if yea, whether or not were you present at the said trials; and whether or not any evidence was suppressed by the said John L. Hayes and A. H. Lawrence, acting as counsel for said F. N. Clark in said trials? If yea, please state all you know about it.

64th. Whether or not said Hayes or said Lawrence informed you, before the trial, in November, 1852, that he had taken certain letters and vouchers, intended to be used as evidence in the trial of these cases, to the office of Mr. Carlisle, the counsel for the said B. C. Clark and W. H. Y. Hackett, and that said Carlisle had agreed the same might be read in without being sworn to; if yea, were any such read in at the said trial? Please state all you know about the same.

65th. When was the decision in the said suits rendered? Whether or not they were postponed until the March term, 1853?

66th. Whether or not you had correspondence with said J. L. Hayes and others, concerning said suits between the trial and the rendering of the decision in the same? If yea, please state with whom, and annex any letters in your possession, received during that interval, which relate to the inquiry here made.

67th. Whether or not you were in Washington in the month of April, 1853? If yea, please state whether or not you saw Mr. A. H. Lawrence on your arrival there; and whether or not you asked him what the grounds of the decision were; and whether or not he told you; and if nay, please state whether or not he re-

ferred you to the judges of the circuit court for their reasons; and if yea, state what you did in pursuance of such recommendation.

68th. Whether or not the said Booth's suit against F. N. Clark was appealed to the Supreme Court? If yea, when? Whether or not the decision in the suits B. C. Clark and W. H. Y. Hackett were given in the same day? If nay, when; and why not? Please state fully all you know of the matter.

69th. Whether or not the judges of the circuit court offered to give a rehearing of said case of B. C. Clark and W. H. Y. Hackett against said F. N. Clark, and admit additional evidence? And if yea, whether or not said Hayes or Lawrence agreed to make a motion for that purpose; and whether or not they, or either of them, did make a motion for that purpose? If not, please state all you know about it.

70th. When was the March term of said circuit court adjourned in 1853? Please state whether or not anything occurred in said court, on the day of adjournment of said March term, in relation to said B. C. Clark and Hackett's suit vs. said F. N. Clark; if yea, please state the same fully.

71st. Whether or not after the adjournment of said court you were in said A. H. Lawrence's office; and whether or not you had conversation with him about said suits? If yea, please state the same fully.

72d. Whether or not said suits were appealed to the U. S. Supreme Court? If yea, please state when.

73d. Whether or not did you have any conversation with said Hayes about bonding out the funds which were enjoined? If yea, please state when and where, and how many times you had such conversation, and the substance thereof.

74th. Whether or not you have had any correspondence with said Hayes or said Wm. H. Y. Hackett, the defendant in this suit, about bonding out said funds? If yea, please annex any letters of either or both of them in your possession on this subject to your deposition.

75th. Whether or not you had correspondence with said Hayes and Lawrence between time of the adjournment of the circuit court, March term, 1853, and the trial of the said suits in the Supreme Court, 1855? If yea, please annex any letters received from them, and copies of those sent to them in your possession, to your deposition.

76th. Whether or not you were in Washington at the trial of said suits in the U. S. Supreme Court? If yea, how long were you there before they were called for trial? Whether or not was Mr. A. H. Lawrence employed to argue the said cases; and whether or not he did argue the said cases? If yea, whether or not he

disobeyed instructions in so doing? State fully all you know about this inquiry.

77th. Whether or not you were informed by said Lawrence after the trial of said cases, that Carlisle, the counsel for the plaintiffs, had agreed that the court should hold for advisement the case of B. C. Clark and Hackett vs. F. N. Clark, until the trial of the Booth case against F. N. Clark? If yea, please state whether or not you subsequently ascertained that it was not to be so; if yea, what did you do in consequence of said discovery? Please state fully.

78th. Whether or not said Lawrence tried the case, Booth vs. F. N. Clark, in Supreme Court? If yea, how soon after the trial of the other said suit? And if yea, whether or not said Lawrence did not act contrary to instructions in so doing? Please state fully all you know in relation thereto.

79th. Whether or not, after the decision in the Supreme Court in the case B. C. Clark and Hackett vs. F. N. Clark, and before the decision of *in* the case Booth vs. F. N. Clark, in same court, the said Wm. H. Y. Hackett and J. Hopkins Stewart came on to Washington; and whether or not an appointment was made by said J. L. Hayes for you to meet the said Hackett, Stewart and Hayes, to arrange a compromise, and to draw the money from the Treasury? Please state all you know about it.

80th. Whether or not the said Hackett and Stewart left Washington soon after the appointment for a meeting between you and them by the said Hayes?

81st. Whether or not you had any interviews with the said Hayes after said Hackett and Stewart left Washington relative to a proposition for a compromise, which said Hackett and Stewart desired to consummate before they left? If yea, please state what was said at such interviews.

82d. Whether or not, in March or April of the year 1855, you shew to the said Hayes in Washington an original letter, or a copy of one, written by said Hayes to the Hon. Rufus Choate, at Boston, and marked confidential, in which he speaks unfavorably of the said F. N. Clark? If yea, please annex the same, and state fully what, if anything, said Hayes said about it.

83d. Whether or not after the adjournment of the Supreme Court, in March or April, 1855, you had a conversation with said Hayes about the manner in which the said suits had been managed? If yea, please state all that was said by either of you during such conversation.

84th. Whether or not, in March or April, 1855, you notified said Hayes that a bill in equity was agoing to be drawn and filed in the circuit court at Washington, to enjoin said Hackett as soon as he came within the jurisdiction to receive the funds; and whether or not you proposed to said Hayes to bond the funds out

of the Treasury; and whether or not the said Hayes wrote to B. C. Clark, at Boston, for permission to do so? If yea, whether or not said B. C. Clark replied to said Hayes or to one George W. Frothingham? And if so, please state the reply; or if you have said letter of B. C. Clark in your possession, annex the same to your deposition.

85th. Whether or not said Hayes proposed to refer the disposition of the award made to F. N. Clark unto the Honorable Judge Harvey, whose decision should be final? If yea, whether or not you accepted the proposition in behalf of said F. N. Clark; and whether or not said Hayes receded from said proposition? If yea, please state all you know about it.

86th. Whether or not you went to New York in the month of September, 1850, or thereabouts, to consult with Michael Dougherty in regard to prosecuting the claim for the vessel and cargo of the schooner Louisiana, before the commissioner on Mexican claims; and whether or not you saw said Dougherty? And if yea, please state whether or not your object in calling on him was to see if he, said Dougherty, would pay the sum of fifty dollars to James H. Causten, in order to have said claim prosecuted; if yea, was he or not willing to pay the said fifty dollars? Please state the result of the interview fully. And how long did you stay in New York?

87th. Whether or not, soon after your return to Boston, you saw the said F. N. Clark, and communicated to him the result of your interview with said Michael Dougherty; and whether or not he had previously any knowledge that you intended to go or had been to New York; and if you made such communication to him? Please state what he said in reply; and whether or not he said that he and said Dougherty had abandoned said claim.

88th. Whether or not, at such interview with said F. N. Clark, you recommended to him to put the claim for the vessel and cargo in jointly with Dougherty, and run for luck? If yea, please state all that was said by both of you upon that recommendation.

89th. Whether or not at that time you proposed to said F. N. Clark, for you to open a correspondence with James H. Causten in regard to the prosecution of said claim? If yea, please state all that was said in relation to such a correspondence by both of you.

90th. Whether or not you opened such correspondence with said Causten; and whether or not the same was without F. N. Clark's knowledge?

91st. If you shall have answered you opened such correspondence with said Causten, whether or not it was to get said Causten to prosecute the said claims; and whether or not you received any letters from said Causten? If yea, please annex the same, if in your possession; and if not in your possession, please state where

they are; and if you have any copies of your letters to said Causten, please also to annex them to your deposition.

92d. If you opened such correspondence with said Causten, whether or not you communicated information of the same to said Michael Dougherty or to Charles H. Dougherty? If yea, whether or not you have any letters from them, or either of them, concerning the same; if so, please annex the same to your deposition.

93d. Whether or not you opened a correspondence with the Honorable Robert C. Winthrop, then a member of Congress? If so, please state when, and your reasons for so doing; and whether or not he recommended several agents, who were prosecuting claims before the board of commissioners; and whether or not you communicated the same to the said Michael Dougherty or Charles H. Dougherty.

94th. Whether or not the said Ferdinand N. Clark employed either of the agents recommended by Honorable Robert C. Winthrop; and whether or not the said Michael Dougherty and Charles H. Dougherty, or either of them, employed the same agent or agents?

95th. Whether or not you saw said James H. Causten in the city of Washington in the winter or spring of 1855? If yea, when; and whether or not you had a conversation with him about the suits then pending at Washington against said F. N. Clark; if yea, whether or not said Causten told you that he discovered the claim of said F. N. Clark against Mexico, when the first board of commissioners on Mexican claims sat in 1840 or 1841, from the evidence furnished by Mexico, and communicated the same to said F. N. Clark, and that said Clark took no notice thereof until the last days of the sittings of said board, or something to that effect. Please state the same fully, and as nearly in the language used as you can.

96th. Whether or not, at that or a subsequent interview, said Causten gave you his reasons for demanding a certain sum of money from said F. N. Clark and Dougherty before he would prosecute the claim before board of commission? If yea, please state the same, also whatever conversation took place at that time between you.

97th. Whether or not you were in New York city some time during the year 1841 or 1842; and whether or not at that time the said Ferdinand N. Clark and said Charles H. Dougherty were engaged in preparing the claim for the schooner Louisiana and cargo to be presented to the board of commissioners at Washington? If yea, please state whether or not you were frequently present at the interviews between said F. N. Clark and said Dougherty; and whether or not said Charles H. Dougherty, at one or more interviews with said F. N. Clark, said anything as to who owned the claim for the schooner? If yea, please state what he said about

the same, and whether or not he expressed himself as sanguine of success in prosecuting the said claim; please state what he said about the prospect of success.

98th. Whether or not you know when said John L. Hayes left Portsmouth and took up his residence in the city of Washington of your own knowledge, or from information of said Hayes? If yea, please state when, and the source of your knowledge.

99th. Whether or not, of your knowledge, was said Ferdinand N. Clark in New York city in the autumn of 1843? If yea, please state the circumstances under which he went to New York, and how long he remained there; and whether or not the said F. N. Clark was imprisoned in said New York city? If yea, state by whom, and for what.

100th. Was or was not the said F. N. Clark, while in said New York, restrained of his liberty by a receiver, under the laws of New York? If yea, who was said receiver?

101st. Whether or not said F. N. Clark was fully examined before William A. Booth, as a receiver, or any other person as a receiver, in the city of New York, in regard to his proceedings in bankruptcy in the U. S. district court for New Hampshire? If yea, please state all you know about said examination.

102d. Whether or not one William A. Booth, of New York, filed a bill in the circuit court of the United States for the District of Columbia, as a receiver, against said Ferdinand Clark, praying that the award might be enjoined? If yea, whether or not you have a copy of the record of said case as used in the U. S. Supreme Court? If yea, please annex the same to your deposition.

103d. Was you present or not at the term of the circuit court for New Hampshire, held at Exeter, New Hampshire, in October, 1856? If yea, please state whether or not a bill in equity was pending in said court, in which said Ferdinand Clark was complainant, and Wm. H. Y. Hackett and others were defendants; and also a bill by said Hackett against said Clark on appeal? If yea, please state all that took place concerning the same at that term, and by whom.

104th. Whether or not you have in your possession any letters or documents affecting this case, not specifically mentioned? If yea, please annex the same, and if you know anything more that will benefit the plaintiff, please state the same fully.

(Signed) F. N. CLARK,
By his att'y, G. D. GUILD.

Sept. 25, 1858. The defendant objects to each and all the foregoing interrogatories as informal, leading, incompetent, and irrelevant, but will not x.

W. H. Y. HACKETT,
By his att'y, WILLIAM H. HACKETT.

Deposition of Isaac Clark.

On this 2d day of October, A. D. 1858, appeared before me, C. W. Loring, a commissioner for the circuit court of the United States for the district of Massachusetts, Isaac Clark, a witness named in the annexed commission to be examined in behalf of the complainant; and the said Clark being by me first carefully examined and cautioned, and sworn to testify the whole truth relative to the matters he was interrogated to, did depose and say, in answer to the interrogatories in said commission proposed for the complainant, as follows:

1. Answer to 1st interrogatory. Isaac Clark; 66 years; merchant, Roxbury, Massachusetts.

2. I have such copy; I have examined this record carefully and do now examine it. It does not contain a full and perfect account of the proceedings in the said circuit court. There are discrepancies in the printed record. All the proceedings of Major F. T. Lally and James S. Thayer against said award are wanting; and besides, the discrepancies, errors and omissions in the said printed record, as used in the trial in the United States Supreme Court, are numerous and prejudicial to F. N. Clark; a great many names are wrongfully spelled; and on page 40 the claim against the Mexican republic is wrongfully set forth therein, to wit:

In the schedule of the United States district court for district of New Hampshire, it is stated: "Mexican republic do., under claim subject to a mortgage," and in said printed record it is stated, "Mexican republic, subject to a mortgage;" thus leaving out the word claim, which is essential to the proper understanding of said schedule; and generally the printed record is very imperfect in names and words, and has many omissions, and A. H. Lawrence and John L. Hayes were seasonably instructed to correct and complete it. But they did not.

3. I have such a paper, and annex it. I first saw it on the day of the trial of said case in the Supreme Court at Washington. Mr. Nelson, who argued the case, gave me this copy as soon as his argument was finished. He had used it and referred to it during his argument; and similar ones were given to each of the judges, by Mr. Carlisle, counsel for the appellees.

4. I have a copy of the said brief, and annex it. He did so seasonably direct the counsel not to use the brief in question at the trial, but it was used ———; as soon as Mr. F. N. Clark, who was then in Boston, received a copy of the brief, he telegraphed to me and the counsel, forbidding the use of the brief at the trial till it was corrected. It, the brief, was received by F. N. Clark from the printer, by mail, but a few days before the trial. He immediately wrote and telegraphed not to have the brief used. I saw the telegraphic despatch in the hands of the counsel; the letter was re-

ceived by me on or about the 25th December, 1854, and I gave it to Mr. Lawrence or Mr. May, on the morning of the 26th, before the trial commenced. They had received the despatch before. There was evidence in the printed record which was not in the brief, which was of vital importance to the case. Henry N. Clark's depositions are omitted in the printed record; they are on pp. 154, 157, 161, 164, and Caustin's correspondence on pp. 206, 211 of printed record, (as well as that part of record evidence of circuit court omitted, as before stated, in the printed copy.)

5. Yes, and annexed it on or about the 17th of March, 1857, in the office of Hatch, in Portsmouth, (N. H.) I had a conversation in reference to said letter with said Hatch. A bill in equity, or complaint, had been filed by Judge Fernald, as counsel for F. N. Clark, and among the exhibits was a copy of this letter. When Hatch saw it he told me and Mr. Fernald that he had never written such a letter.

6. I have such copy of such judgment; of my own knowledge it was obtained by collusion on the part of the counsel of F. N. Clark with the counsel for the plaintiff, B. C. Clark. I was in New York city at that time, and was then and there attending personally to the business of said F. N. Clark, and one Joseph Hopkins Stewart, counsellor at law of New York city, was employed to defend the suit, then pending in the superior court in New York city and county, and ample funds were then and there placed in the possession of said Stewart by the said F. N. Clark, for the expenses of the defence, and the said Stewart was seasonably instructed by the said F. N. Clark as to the modes of defence, and all the necessary evidence in favor of said F. N. Clark was seasonably placed in the hands of Stewart, showing and proving that the said B. C. Clark was a debtor to the said F. N. Clark on the 24th of June, 1842. But the said Stewart suppressed all the said testimony, and wilfully allowed said judgment to be rendered by default. The said F. N. Clark was in Boston, Mass., on 28th day of June, 1842, sick, and had been in feeble health from July, 1841. I have in my possession a letter from said J. H. Stewart to said B. C. Clark, dated at New York, June 23, 1842. I annex the judgment and the letter, and know the handwriting and signature to be those of Stewart. Ferdinand N. Clark first knew of said judgment in May, 1851, when it was filed by said B. C. Clark, in the circuit court of the United States for the District of Columbia, and that was the first time I ever saw the judgment or knew of its existence.

7. I have that certificate and annex it, and on it the name of Charles H. Dougherty is mentioned. He is the same person.

8. I have the certificate of bonds referred to. I annex it, and I know the signature to be that of P. R. Fendall. I know that the parties therein named did give bonds. Fendall was at that

time United States district attorney for the District of Columbia ———.

9. I have examined the account of B. C. Clark & Co., referred to, and I know the said account to be false, and that the said copartnership of F. Clark & Co. was dissolved on the 6th Feb., 1837, and closed up and settled at that time all their copartnership business, and said F. Clark & Co. did not owe said B. C. Clark & Co. on the 21st of May, 1851, any debt whatever, and of my knowledge and belief the said B. C. Clark & Co. were debtors to said F. Clark & Co. in a large amount, on the 28th day of January, 1843.

10. I have a copy of the circular, which I annex. Copies were sent to B. C. Clark & Co., and correspondents generally. At the time of its dissolution, the firm was solvent.

11. Yes, the said Clark was in mercantile business in Havana, and I was informed that the said Norman was also in business there. I know that said F. Clark was then doing a large commission business, and in high mercantile credit, and was informed that James Norman was in good mercantile business and credit at that time.

12. I have such copy. I annex it. I know that, on the 28th January, 1843, said B. C. Clark and B. C. Clark & Co. were indebted to F. N. Clark as in the account stated.

13. I have in my possession a letter so dated, from B. C. Clark to F. N. Clark, namely, dated at New Orleans, January 4, 1838, and also one from same party to same party, dated Feb. 12, 1838, at Boston. I annex them. That dated at New Orleans, Jan. 4, 1838, is in his handwriting, and signed by him; the other is not in his handwriting, but is signed by him.

14. I know the said drafts were paid on account of F. N. Clark.

15. Yes; I annex them, and know the signature to each to be B. C. Clark's said letters, (i. e.) that July 15, 1830, and that dated April 28, 1831, refer to such shipment of coffee to John Clark. I did so receive said account, with orders to collect for the credit of F. Clark.

16. I have; I annex. The signatures are genuine. At that time F. Clark would not ship to John Clark without the guarantee of B. C. Clark.

17. I have such letters, and annex one to me, dated Feb. 23d, 1829, and one dated April 3d, 1830; and four to F. Clark, dated Nov. 3 and 4, 1829, and Nov., 1829, and May 19th and 21st, 1830.

18. I have such schedule copy, and copy of assets, and annex them. In them F. Clark is represented as a creditor of John Clark; of my knowledge the said notes have never been paid, nor any part of them, and are still due the said F. N. Clark from the said B. C. Clark, as guarantee. And further, I am informed and

do believe that the said John Clark never paid any dividend to his creditors in his bankruptcy in New Orleans, in 1830, nor in his bankruptcy in Boston, in 1842, and the said debt, due to the said F. Clark, is the same indebtedness alluded to in said B. C. Clark's letter of July 15, 1830, aforesaid.

19. John Clark was in Boston at that time, and I think that F. N. Clark was also; we had conversations on the subject. He represented to me that he then had some old debts which he then owed, and which he was unable to pay, and in order to obtain my business, and said F. N. Clark's, he had made arrangements with his brother, B. C. Clark, of Boston, to make advances on whatever goods were sent to him on consignment, or on his own account at New Orleans.

20. B. C. Clark did trustee such fund; the amounts of said funds are stated in F. N. Clark's account against B. C. Clark, referred to in 12th interrogatory; the said sums were then due the said F. N. Clark, from said Caldwell, and Trufant, and P. Laidlaw. The said trusteeing of said funds, by B. C. Clark, was on or about 1839 to 1841. Soon after this, I called on B. C. Clark, in Boston, and informed him that from certain reliable information, that I was satisfied that unless he then withdrew his trustee attachment on F. Clark's funds aforesaid, or made arrangements to have the said funds withdrawn from Caldwell and Trufant, and deposited in some safe hands till he could have some understanding with F. N. Clark respecting the claim F. N. Clark then had against B. C. Clark, that I was satisfied that Caldwell and Trufant would fail, and never pay a cent to said F. N. Clark; this notice I gave B. C. Clark a long time before Caldwell and Trufant failed in bankruptcy, and whether or not B. C. Clark after obtained from Caldwell and Trufant the said funds, or from Peter Laidlaw. I never knew both of the said claims were good at the time they were trusteed by B. C. Clark, and B. C. Clark has never accounted to F. N. Clark for any part of the said funds. He refused in that conversation to make any arrangement about the funds, let the consequences be what it would.

21. They did it; did so originate in 1834.

22. I have such letter, and annex it; the signature is that of John Preston. He is now dead. He married B. C. Clark's sister, and B. C. Clark married the sister of John Preston.

23. I have such certified copy of the bonds, and annex it.

24. I have such letter of Smith; the signature is his, and I annex it.

25. I have three letters from (F. T.) Lally to F. N. Clark, and annex the same. Thayer & Lally were such agents of Clark.

26. I have such certified copy of petition, and annex it; the original petition is not now on file, and could not be found in March, 1855, by John A. Smith, but had been before then taken

from the file of said court, together with the answer to said petition and bill of exhibit, by some unknown person, previous to November, 1854, as I was informed by the said Smith.

27. I have, and annex; it is a genuine signature.

28. I have the agreement referred to, and I annex. I witnessed it, and it was the last agreement made between the said parties.

29. I have a letter from J. S. Tyler to said Clark, and annex the same. The signature is true and genuine; the said claim was settled and compromised by B. C. Clark. He had no authority to settle or compromise; he acted without the knowledge or consent of F. N. Clark. The claim was, in my knowledge and belief, a valid claim for a total loss. The said Clark and Preston were stockholders in said (Ocean Insurance Company,) but to what extent I do not know, though I understood from Mr. Preston that he owned in the neighborhood of $40,000 worth.

30. I have such printed copies, and annex them.

31. I have not the original, but have a copy which I annex; I did have the original; I placed it in the hands of A. H. Lawrence, in season for it to be used at the trial, in behalf of F. N. Clark, in the United States circuit court for Columbia District, vs. B. C. Clark and W. H. Y. Hackett, and on or about the day said case was heard, I saw John L. Hayes take the said letter from the package of F. N. Clark's papers and put it in his pocket, and I know it was not used in the trial. The letter was accompanied by a power of attorney, for said F. N. Clark to sign it; is in the handwriting of C. H. Dougherty, and signed by him; it was brought from New York by Michael Dougherty, (the) father of said Charles, to Boston.

32. Said Dougherty did so conspire. I have a copy of a letter from Joseph A. Scovill, dated at New York, May 19, 1851, purporting to have been written in behalf of the parties who had enjoined the award, and requesting me to repair to New York, there to compromise the suits just commenced against said award. The original was lost in the same manner as that of Dougherty's, already described in answer to 31st interrogatory. I have also some other letters, and copies of letters, which I annex.

33. I annex the said letter; said Auguerre so acted as agent for F. N. Clark. The said signatures are well known to me. F. N. Clark's mercantile standing was then good.

34. I have said copy, and annex it; the original I saw in the possession of A. H. Lawrence, in Washington. The said letters of B. C. Clark were in possession of said Lawrence; all the papers mentioned were in his possession; I saw them and examined them in his office; after I saw them he told me he was to use them in a rehearing in the circuit court, in May, 1853, before the appeal to the Supreme Court; after the trial in the Supreme Court,

I went to his office for them again, in the month of April, (1855,) and he told me that they were mislaid; that they could not be lost; that he would look for them thoroughly and find them, and return them, but he never did. The copies I annex.

35. I have a copy of B. C. Clark's receipt, and annex it; the original was filed in the district court for New Hampshire, in bankruptcy.

36. I have such certified copy, and annex it. The reason of its being dated 1851, I suppose the imperfect form of the figure six in the original answer; why Hatch did not date his copy, I do not know.

37. It is true, B. C. Clark signed said bail-bond, while F. N. Clark was under arrest. But it is not true that the said F. N. Clark absconded from the United States. I have some letters in relation thereto, written by B. C. Clark to Ferdinand Clark; I annex them. I had such conversation; it was in the fall of 1834 that F. N. Clark left for Havana. His old established business was there at that time, and had been there since 1819, and said bail-bond had been signed in the summer previous, namely, in summer of 1834, and I had many conversations with said B. C. Clark prior to said departure of F. N. Clark for Havana, in 1834; and in many of those conversations said B. C. Clark expressed his great displeasure, because said F. N. Clark did not go to Havana sooner; at which time, and until 1837, B. C. Clark had large business with the said F. N. Clark, and held a power of attorney of said F. N. Clark, which the said B. C. Clark continued to use when the said F. N. Clark was present in Boston, and up to October 17th, or thereabout, in 1842; after F. N. Clark's said departure for Havana, via New York and Baltimore, and before he left the United States, I stated to him that F. N. Clark had not signed a certain agreement to pay £3,000 sterling from funds in Havana, to Baring Brothers & Co., the effect of which agreement would be to discharge said B. C. Clark from said bail-bond; B. C. Clark then told me that he had directed F. N. Clark not to sign that said agreement, but to go to Havana, and take possession and dispose of all the effects of P. C. Flint & Co., in order to pay himself and the said B. C. Clark what was due them from said P. and C. Flint & Co., and as he would be able in all probability to beat the said Baring Bros. & Co. in their suit on the bail-bond aforesaid.

38. I have a copy of the said agreement, to have been signed by said F. N. Clark and the assignees of P. & C. Flint & Co., which I annex. It was not signed by F. N. Clark, because of the persuasions of B. C. Clark.

39. I have the affidavit of George Clark and Justus Clark concerning the collection of $9,000 by said Stewart for said

F. N. Clark, and annex it. Said George and Justus are both dead.

40. I have copies of said bill and answer, and annex the same; and said Justice Curtis did give an adverse decision to said bill.

41. I have the said order, and annex it. It was given subsequent to the failure of the drawers, P. & C. Flint & Co.

42. I was in New York city in July, 1841, and during the same month F. N. Clark did arrive in said city. He was very much debilitated, both in mind and body. Said Stewart endeavored to gain his confidence, and recommended that he should be allowed to proceed to Boston for the purpose of effecting a settlement with B. C. Clark, and did so proceed to Boston for that purpose; but he was not successful. On his return, I had a conversation relative to the matter, and he told me that he had advised said B. C. Clark to commence a suit in New York against F. N. Clark. Said Stewart, at that time, told me that he believed it to be more to the advantage of F. N. Clark to allow B. C. Clark to sue him, than it would be to effect any settlement, and therefore he, as attorney for F. N. Clark, had recommended said B. C. Clark to commence said suit.

43. The said suit was commenced, and Stewart was employed to defend it, and intrusted with a large amount of funds; he was furnished with several thousand dollars for the expenses of said suit, but he allowed the suit to be defaulted, and judgment entered.

44. I was acting in behalf of F. N. Clark, in the city of New York, in the winter, spring and summer of 1842, and said F. N. Clark was in the city of New York on the 24th of June, 1842. He did leave New York on the 27th or 28th of June, and proceeded to Boston. His health was very feeble, and he said to me that his object in going to Boston was for its benefit, and to effect a settlement with B. C. Clark. See Stewart's letter to B. C. Clark, June 23d, 1842.

45. Said F. N. Clark was not, to my knowledge and belief, notified of the existence of said judgment till 15th of May, 1851.

46. The conduct of said Stewart was hypocritical in the extreme, and its effects very prejudicial to the interest of said F. N. Clark. He pretended great friendship, and he was the only confidential of said F. N. Clark, and collected for him a large amount of money, but endeavored to get up suits against the said F. N. Clark, on fraudulent pretences, and prevented F. N. Clark from recovering his property, and coming to a settlement with his creditors in New York and elsewhere.

47. He has caused other suits, with a view to oppress F. N. Clark, and since said award, Stewart has employed agents to influence Clark to allow him a part of said award; and he has written to that effect, to me and to Ferdinand. I annex two written to me, &c. [See last interrogatory.] He claimed to have been the

cause of the injunction on the payment of the award, at Washington, and promised to withdraw the said injunction, if a compromise could be made.

48. I have a copy of the order of Judge Harvey, referred to, and annex it. The original petition of Hackett is not on file in said district court. Judge Harvey told me that Hackett had taken it from the files, and had not returned it, though its return had been ordered.

49. I have the printed copy of said proceedings, in Booths vs. Clark. I annex the same.

50. I am acquainted with said Hayes, of D. C. I have known him since Sept., 1851, when I first saw him in Boston. In our first interview, he stated to me that he understood there was a proposition for a compromise, in regard to the injunction on the award aforesaid. I asked him if he was J. L. Hayes, of Washington; he said he was. I stated that the suits were all originated by the said Stewart, and that if six cents would compromise it with said Stewart, that it would not be compromised, as he had sent various agents to get a compromise—for all the suits against the award prior to May 19th, 1851, were founded on judgments in defaulted suits against F. Clark, which he (Stewart) had originated, and in which he had been employed by F. Clark, as his attorney, which defaults said Stewart had fraudulently permitted to take place; and I further told Hayes, that all of said judgments, with the exception of that of B. C. Clark, were on drafts, signed in blank, in Havana, and given into the hands of parties in New York, there filled out and discounted; and said drafts were paid, when due, as could be shown by reference to the drafts themselves, and ought to have been returned to said F. Clark, without any charge to him; but which said Stewart had prevented from being returned to him, to the end that suits might be founded on them. Hayes then left me, but called again the next day. He stated to me that Mr. Choate (counsel for F. N. Clark) requested him to stop in Boston, and prepare the answers to the bill, filed at Washington, but that he, Hayes, was dissatisfied with the amount of fees he was to receive. I told him that if Mr. Choate wished him to remain, I would recommend Mr. F. Clark to allow him $250 more, as a contingent fee. He seemed pleased, and went away.

51. This question is partially answered in the preceding: After my second interview with Hayes, he went to work at the answers. He made them all, and took them to Washington, with the exception of Lally & Thayer's, which he neither made nor took; in preparing the answers, I offered to furnish him with proof, that nothing was due said B. C. Clark on the judgment in question, or on any of the suits commenced prior to 19th May, 1851. I offered them to him, and (he) took some and looked at them, but said he did not want any of them, as the proceedings in bankruptcy was a

sufficient defence, and was all he wanted. He also stated that Mr. F. N. Clark would not be required to swear to the answers, but that he could do it, as attorney; but afterwards he did require it of Clark, who was sick in the country.

52. He told me that he must be in Washington to file the answers, as court would be held in October. He left Boston as soon as the answers were ready. He went to Washington; so far as I know, he did nothing after filing the answers, till March, 1852. Early in March he made an arrangement with the counsel of B. C. Clark and Hackett, to take evidence on both sides for the March term. Mr. Choate got his evidence immediately arranged. The arrangement was, that 3 days' notice should be given by either party who might wish to bring on the trial that term, and five days' notice on taking the testimony of any witness. See printed record of trial, p. 105.

53. In April, 1852, I went to Washington, to hurry on the trial that term. I saw Hayes. He told me he was ready for trial, as soon as Mr. Choate was ready with the evidence. I told him Mr. Choate was all ready. He then said there would be no difficulty in having the trial come on that term, as it was so understood by the opposite counsel.

54. I have no such letter, that I know of, from Hayes to Choate. I have a letter dated April 28th, '52, from Hayes to F. Clark, in which he promises to fix a time for the trial agreeable to Mr. Choate, and saying that he had written Mr. Choate to that effect. I annex the same. I know the signature to be genuine, and on its receipt Mr. Choate went on to Washington forthwith. Also letters May 5th and 15th.

55. I was in Washington about the middle of June, '52, and I called on said Hayes. He gave me a letter to the clerk of the circuit court, requesting him to show me the said papers. I have it not. I gave it to J. A. Smith, clerk of the court.

56. I examined the files, and discovered an agreement of counsels, on both sides, that the bill of Lally and Thayer should go to the auditor, and that he should make his return on the 10th of May. This agreement was dated May 6th. I found the bill and answer, in case of Lally and Thayer, and the auditor's report. Their claim on the award was allowed.

57. In the winter of 1855, I examined the said files again. All the papers relating to Lally and Thayer's claim, including the agreement to refer to the auditor, his report, and the order of the judge to draw the funds, were missing. I inquired for them of the clerk, and he said that he had made search for them in the fall of '53, that he might send them up to the Supreme Court, but that he could not find them.

58. Hayes was in Boston in September or October, 1852. I endeavored to see him, but was not successful.

59. I went to Washington in October, '52. I met said Lawrence near Mr. Carlisle's office, whither he said he was going, for said purpose. I requested him to defer the deposition of Caustin till Mr. F. Clark could be notified, as said Clark had letters from Caustin, which were important to be added; he said he would defer it, and he went on to said office.

60. I did receive sundry court records from F. N. Clark, to be used at the trial. I gave them to Lawrence: they were the certified court records of the supreme judicial court of Massachusetts, in the proceedings of F. N. Clark, against the Ocean Insurance Co. of Boston, for total loss of bark Two Friends, and her cargo, amounting to $14,661, and which court records show that said B. C. Clark had, on the 17th October, 1842, made a compromise unlawfully, as F. N. Clark was at that very time in Boston, for $6,500: the total loss, with interest, at that time, would have amounted to upwards of $23,000; and also a certified court record of said court, in the suit by F. N. Clark against the assignees of P. and C. Flint & Co., which was also so unlawfully compromised by said B. C. Clark.

61. The said records were not used as evidence in said trial, in said circuit court of the U. S. I received them on the last of October, or the first of November. I took them to J. L. Hayes's office and showed them to him. He said "they were just the things to tip B. C. Clark's and Hackett's suit out, but he was strong enough in the bankruptcy settlement without them, and that he would not need them." I took them thereupon to Mr. Lawrence's office, as all the other papers were there. I gave them to Lawrence, and he said that they were good strong evidence, and that, as they were court records, he could put them in in course of the trial, without notice to the opposite counsel, and that he would give no notice till he came to read them on trial. But they were never offered as evidence in the trial, or brought to the notice of the court.

62. A paper purporting to be Caustin's deposition was used. I did examine it; it was in the handwriting of Carlisle, counsel for complainants.

63. Said suits were tried at said time. I was present at the trials, and evidence was suppressed in them; the suppressed evidence consisted of certain letters from Clark (B. C.) to F. N. Clark, viz., one dated New Orleans, January, 1838; and one dated Boston, February 12th, 1838 and one July 15th, 1830; and one from John Preston to F. N. Clark, dated June 9th, 1838; and also a letter of Charles H. Dougherty to me, dated at New York, December 27th, 1850; and a letter from ——— Nelson to me, dated at New York, August, '51; and others, viz., Dougherty's letter of April (28th,) 1851, with his bond aforesaid; Scovall's letter of May 19th, 1851; and also the court records of supreme judicial court of Massachusetts, as aforesaid; and further evidence tending

to show that said F. N. Clark was not indebted to said B. C. Clark and Hackett, or either of them; and that instead of bringing forward this evidence, said Hayes did admit and state to the court, that he acknowledged the indebtedness of his client to the said complainant, but relied on the settlement in bankruptcy.

64. Said Lawrence did state to me that he had taken the letters to Carlisle, and made the agreement with him, that they should be read without being sworn to. Only those of Caustin were read; all the others, as aforesaid, were not read.

65. The decisions in said causes were rendered in March term, '53.

66. I had such correspondence with Hayes's and Lawrence's counsel aforesaid. I annex them: from A. H. Lawrence, dated March 28th, and April 7th, 1853, and May 11th, and Oct. 18th, 1854, and from J. L. Hayes, Feb. 15th, 1854, and others to F. N. Clark, dated Oct. 19th, 1854, Jan. 5th, March 5th, Dec. 6th, 1855.

67. I was in Washington in April, 1853, and saw Lawrence; he asked me what Mr. Choate said in regard to a compromise. I told him there would be none. I asked him what the grounds of the decision were; he said one of the decisions was lengthy, and written; the other, that in Clark's, &c., was orally given, and short. He thought the judge had a copy at home of what he had said; that it was not finished, (i. e.) the case, but was only hung up till after adjournment. He told me I had better go and see Judge Morsell, who had given the decisions, at Georgetown. I went to Georgetown, and called on Judge Dunlop; he stated that he had decided the Booth case in favor of F. N. Clark, and hoped F. N. Clark would appeal in the other case. I then asked him on what points it was decided; he said that F. N. Clark's counsel said he could not sustain the bankruptcy proceedings. I said, O no, meaning the counsel could not have so said. He asked if I had seen them. I stated I had seen Lawrence. He asked if I had seen Mr. Hayes. I said no. He then said it was not Lawrence, but Hayes, who had said they could not sustain the bankruptcy proceedings. I then told him the counsel had omitted certain important evidence, showing that B. C. Clark was debtor to F. N. Clark, instead of creditor. He said if it had been made known at the trial, he would have ruled it in, or stayed proceedings, till the objections of the other counsel might be removed; and further, that the case was not finished, but was held for advisement, and if the counsel would make a motion for a rehearing, it would be granted, and the evidence admitted for further argument. I saw Judge Morsell afterwards, and stated what Mr. Lawrence had said, and he did not tell me whether or not he had a copy of his decisions, but gave me to understand that they, the judges, would be in court the next week.

68. Booth's suit was appealed the same day of the decision. The decision in Clark v. Hackett's case was informally given the same day, but not conclusively, in order that it might remain open for a compromise, as I understood from Hayes and Lawrence.

69. They did, as stated in answer 67. Both Hayes and Lawrence agreed to make a motion to that effect, but they did not make such motion.

70. In the latter part of the month, I think the 28th. The March term was adjourned on the 30th of May till Sept. Mr. Carlisle moved to have judgment rendered, and Mr. Hayes, our counsel, who had agreed to make a motion for a rehearing, neglected to appear, but Mr. Lawrence was there, and said he should appeal. Mr. Carlisle said in that case he should exact bonds for the interest. Mr. Lawrence said that in March the court had stated the amount of bonds would be $1,000. Mr. Carlisle objected, but the judges said they remembered the conversation about the amount of bonds, and they doubted if the Supreme Court would consider B. C. Clark in court; and if not, that Hackett would be out. Therefore Mr. C. withdrew his objection, and judgment was entered and the appeal noted.

71. I went after the adjournment with Mr. Lawrence to his office; he told me that nothing was lost by Mr. Hayes's neglecting to appear and make the motion for a new hearing, as all the omitted evidence would be ruled in before the Supreme Court, and read from a law book to that effect; he told me to go and get the bond signed and send it to him, and to trust him hereafter, and he would see that Hayes should not again trick my brother.

72. They were appealed in May 30th, 1853.

73. About the time the appeal was taken, I proposed to Hayes that he should propose to the complainants for F. N. Clark to be permitted to bond the funds in the U. S. Treasury. Mr. Hayes said he would make such proposition, on consideration that F. N. Clark would consent to the funds being put to interest, one-half to go (to) said F. N. C. for the use of his counsel and expenses of the suit, and the other half for the similar use of the counsel on the other side. I told him I could only recommend my brother to bond it out for his own use, relinquishing B. C. Clark's liability on his bond from the time it should be so taken out till the whole matter was adjudicated. He consented to write to Mr. Hackett on the subject.

74. I have some letters on this subject, which I annex, from Hayes, and also two from Hackett to Hayes, referred to by Hayes in his letters, which I also annex.

75. I coversed on the preparation of the case. I have some letters from Lawrence and Hayes which I annex, and also copies of my own to them.

76. I was in Washington at the trial before the Supreme Court. I arrived there the 16th Dec.; they were called for trial the 26th Dec. He was not employed, but nevertheless he did argue contrary to the instructions of F. N. Clark. He was forbidden by telegraph and by letter.

77. Lawrence so informed me, and afterwards I found it was not so. I then called on Lawrence, and asked him if the case was not to be held for advisement. He said yes. I then showed him a notice from Mr. Nelson, who argued the case with him, to F. N. Clark, to the effect that the court might give an opinion within a few days. He appeared surprised, and I went to see Mr. May, who was to have argued the case instead of Mr. Lawrence. Mr. May said that it was to stand for advisement. I requested him to make a motion to the court that it should so stand. He said he would, or would have Mr. Lawrence do so. I made a similar request of Mr. Lawrence, but Lawrence nor anybody else never did make it.

78. Some weeks after this trial Lawrence tried the Booth suit, though he had been directed to the contrary.

79. Hackett and Stewart did come to Washington between such decisions. Such an appointment was made, but I did not go to it.

80. After the time of the appointment, Hackett left within a day or two. Stewart stayed about a week.

81. I did. I told Mr. Hayes that they, Hackett and Stewart, had come on for a compromise, as I presumed. That they had come to Washington on their own expense, believing that the suit was in such a position that my brother would yield to a compromise, as before offered, namely, for him to (have) forty thousand dollars. He said he thought it was for F. N. Clark's interest to consent on those terms.

82. I did show Hayes a copy of such letter. I annex it. He said at the time of writing it he had been prejudiced against F. N. Clark, and that Mr. Choate had no business to let it be seen. If it had been a southern man who had written the letter to Mr. Choate, and it had been shown, the writer would have challenged Mr. Choate.

83. I did. I told him that in the management of this suit he had worked under the influence of Stewart, whom he well knew was a notorious rascal. He replied that throughout the proceedings, his calculation had been that there must be a compromise, and he had never worked with any other view than to effect one, and he still believed so.

84. I did so notify Mr. Hayes, and proposed to bond the funds out of the Treasury. Mr. Hayes did write to B. C. Clark for permission.

85. I told Mr. Hayes that all that F. N. Clark wanted was a

fair trial, and that such trial he would have before some tribunal. Hayes then said, leave it to Judge Harvey. I told him Mr. F. N. Clark would consent that the judge should try the cause on its own merits, without regard to previous trial, and that Harvey's decision should be final. Mr. Hayes then asked how much he would be allowed. I told him he should have the thousand dollars he was already entitled to, in the event of the successful termination of the suit. He said he would not consent to it, but must have an additional sum—say five thousand more; afterwards, that he would take four thousand. I told him that he would have nothing more than by his first agreement. He then refused to do anything to procure the reference.

86. I went to New York and saw Dougherty, in Sept., '50, and asked if he would pay the said Caustin fifty dollars to prosecute the claim; and Dougherty did refuse to pay said fifty dollars. I called several times on said D. to ascertain if he had any disposition to prosecute the claim. In all our conversations he found fault with Caustin, because he held the papers from the board of commissioners, and blamed Mr. F. N. Clark for having ever written on the subject to Caustin. He told me that it was through Clark's letter that Caustin had taken the papers from the Secretary of the Treasury; that Mr. Caustin had written him some thirty letters without an answer from him. So, as Mr. D. was unwilling to prosecute the claim, I returned from New York, having been there three or four days.

87. I saw F. N. Clark, and told him about said interview with Dougherty. He had known nothing about it before. He said that the claim was abandoned.

88. I told my brother it was a pity to let the claim die out. He said Caustin would like to get a hundred dollars out of his (F. N. C.'s) friends, and that would be the end of it; and that Caustin viewed the claim as settled under the doctrine of J. Q. Adams, that a citizen of the United States, domiciled abroad in a country at war with another nation, having property so captured and condemned, could not claim the interference of our government to protect such property. I told him then that the schooner was directly from the U. States, and that she was owned in the U. S., and recommended him to permit me to propose to Dougherty to prosecute the claim for the vessel, and that for the cargo on joint account, for perhaps the schooner might be recovered. He said it was all abandoned—"let it go."

89. I asked him to give me Mr. Caustin's address, that I might write in reference to the subject. He did so, but said it was no use to write him.

90. I did open such correspondence without the knowledge of said F. N. Clark.

91. I opened such correspondence with Caustin; the original

letters are on file at Washington; the copies are found in the printed record of the trial.

92. I communicated with the Dougherties on the subject. I have already annexed the letter of Dougherty.

93. In December, 1850, I opened a correspondence with said Winthrop, to obtain his assistance in prosecuting the claim. He recommended various agents, and I communicated their names to the Dougherties.

95. I saw Caustin in the spring of '55. He told me he had first discovered the claim in the manner mentioned; gave notice to F. N. C. in Havana; but Mr. Clark took no notice, and he supposed Clark had no confidence in the claim; but in the last few days of the sitting of the commissioners, Clark and Dougherty forwarded to the State Department some documents relating thereto. Nothing was done before (the) old board, and that when the new board was appointed, after the Mexican war, he (Caustin) had written many letters to Dougherty and F. N. Clark, urging them to prosecute the claim, by Dougherty's paying to him fifty dollars, and Mr. Clark one hundred. He concluded from their neglect they had a poor opinion of the claim. I asked him if he had any hopes of its being allowed. He said he had not; and I asked why he demanded the hundred dollars of Clark, and fifty of Dougherty. He said that it was his business to prosecute claims, and advise their prosecution where he could get a fee. He said he prosecuted two similar claims, both of which were rejected, as were almost all he had prosecuted. He further said, that when he learned that Clark and Dougherty's claim was allowed, he petitioned the Senate for a new board of commissioners to re-examine his claims; that the board was appointed, and, after a long session, nearly the same result was arrived at by it as by the former; and he told me that he did not think (Clark's) claim ought to have been allowed; he had never expected—

96. The whole conversation is stated in the preceding answer.

97. I was in New York city in '41 and '42, and said Clark and Dougherty were so engaged. I was frequently present at their interviews. C. H. Dougherty said his father had given him the claim if he would pay expenses. He said he did not expect it would pay expenses, but he would go on as far as to prepare the papers to be forwarded to Washington.

98. Mr. Hayes told me he left Portsmouth and had been in Washington only two or three weeks when he was consulted in relation to these suits.

99. F. N. Clark was in New York in autumn of 1843. He was taken from Boston involuntarily to New York, at the instigation of Russell E. Glover and J. H. Stewart. He was called from his house in Boston, about the middle of the day, as if to be taken down town on business, but was driven about the city till it was

time for the cars to leave for New York via Stonington, when he was put on board of them. I saw him in the cars by accident a moment before they started, and told the men in whose custody he appeared to be, that he should have any kind of bonds they desired; but they would not consent to anything, and before I could see the conductor to state his situation, the cars had started. He was taken to New York and put in the Eldridge street prison, under pretence of having unjustly libelled and slandered said Stewart and Glover.

100. He was restrained of his liberty while in New York by a receiver, at the same time that he was imprisoned by Stewart and Glover, as aforesaid. The receiver was Wm. A. Booth.

101. He was fully examined before said Booth. Booth, being satisfied that it would be useless to hold him longer, permitted him to go at large and finish his proceedings in bankruptcy in New Hampshire, on the condition that said Clark would pay the costs incurred by his arrest, or a certain portion of them, which was paid.

102. Said Booth did so file a bill of complaint. I have a copy of the record, which I annex.

103. I was at said court at said October term, 1856. Such suits were pending. Hackett had filed a motion to dismiss said Clark's bill against him and others, on the ground that the Supreme Court will not grant a review. But Mr. Shaw, counsel for Clark, opposed the motion on the ground that this was an original bill. The other suits were passed over at this time; and in the same afternoon, Mr. Shaw told me that Hackett had consented that it should lie over till the May term; that "it was not ready for argument." The next day the Court came in, both Judges Curtis and Harvey being present; but after the commencement of a trial before them, Judge Harvey went away to hold court in a separate room, and Mr. Shaw had a case before him. I went with them; but very soon returned to Judge Curtis's court, when I found Hackett was reading his bill against F. N. Clark. After he had finished his honor stated that Congress gave him no such power as was called for by the bill. I annex a statement in reference to these transactions, made by me March 16th, '57, and at that time subscribed and sworn to before C. W. Loring, U. S. Commissioner.

104. In question 15, allusion is made to a letter dated April 28, '31, from B. C. Clark to F. Clark, and one July 15, '30. Those letters (?) refer to shipments of coffee from F. Clark to J. Clark, under guarantee of B. C. Clark, prior to July 15, '30. I had been drawn on for the whole amount, and ordered to collect the same of B. C. Clark; but instead of so collecting, I wrote to my brother that it had best stand till he could attend to it himself, and to write B. C. Clark that he would regard it as an unsettled claim, reserving his right, and that if he, B. C. C., would advance on shipments to said F. Clark, he would remit to said B. C. Clark all

funds proceeding from such shipments, without prejudice to said claim, still reserving his right therein. This letter of the 28th April, '31, is in acceptance of this proposition, and thereupon business was renewed. Nothing more was said about the claim till 1834, after the failure of P. & C. Flint & Co.; some drafts that day falling due on which Ferdinand was liable, B. C. Clark proposed to become security (to the State Bank, the holder,) in $7,500, provided said Ferdinand would give time to him and John on the coffee claim aforesaid. But a different arrangement was made. Ferdinand was then at my house in Boston, just recovering from the fever, and unable to attend to business. B. C. Clark made various proposals to him in relation to said claims. Ferdinand at this time was very light-headed, not having recovered his strength, and was, in my opinion, incompetent to transact business. Baring Brothers & Co. claimed that he was liable to them on P. & C. F. & Co.'s to £3,000, and he was arrested at their suit. I had made an arrangement with the assignees of P. & C. F. & Co., by which he was to have been discharged. But B. C. Clark persuaded Ferdinand not to sign, but to go (to) Havana, said B. C. Clark and one J. Preston's having signed his bail bond, because if the arrangement had been carried out, said claim on the coffee shipments was to have been immediately prosecuted. I annex a copy of the intended agreement; also of a draft to have been signed by my brother on said assignees; certificate of Albert R. Hatch that no proof of debts had been filed in district court, (N. H.,) May 20, '51, in said case; 2 policies of insurance, bark Two Friends; bill sale brig Talisman; decree of U. S. C. C. in case of B. C. Clark, and Hackett vs. F. Clark; decision of U. S. Sup. Ct. in case of B. C. Clark and Hackett vs. F. Clark, charter-party of ship Rossanna; copy bill of sale of assets of F. Clark by (Palmer;) decision U. S. Sup. Ct. in case of Booth et. al. v. F. Clark; five letters from J. L. Hayes, Dec. 3, 1851, June 3, 20, and 21, 1851, Dec. 24, 1852; a letter from J. S. Thayer, Oct. 9, 1849; a letter from Louisa M. Stewart, June 10, '55; two do. from C. H. Sandford, April 30, '44, Feb. 10, '52; telegraphic despatch to counsel from F. N. Clark, 18th Dec. '54; J. H. Stewart, June 2, '51; John A. Smith, A. R. Hatch, Dec. 17, '56; note from Dougherty; B. C. Clark's letters to F. Clark, dated Nov. 12, '34, June 13, '42, and May 17, '34; do. to J. H. Stewart, Sep. 2, '41; do. to D. Draper, July 26, '53; John Clark to Isaac Clark, Feb. 23, '29, April 3, '30; John Clark to F. Clark, Nov. 3, '29, Nov. 4, '29, May 19, '30, and May 21, '30; T. W. Letson, Aug. 19, '51; four letters from J. L. Hayes and 2 from A. H. Lawrence; G. Douglass & Co., Feb. 24, '35; J. M. Bell, May 19, '52 ; commissioner's report.

ISAAC CLARK.

Circuit Court of the United States—New Hampshire district.

FERDINAND N. CLARK, Complainant,
vs.
WM. H. Y. HACKETT, Respondent. } In Equity.

Interrogatories to be propounded to Isaac P. Clark, of Roxbury, county of Norfolk, and State of Massachusetts, merchant, and a citizen of said State.

1. What is your age, residence, and occupation?

2. Whether or not you are acquainted with the complainant and respondent in the above-named suit, and whether or not you are related with them, or either of them, by birth or occupation?

3. Do you know one John L. Hayes and one Alexander H. Lawrence, attorneys at law, now or formerly of Washington city, in the District of Columbia? If yea, where and when? What business, if any, have you had with either of them, or both of them, and at what time and place? For whom and by whose authority was said business transacted.

4. Whether or not, to your knowledge, the said John L. Hayes was employed, and did pretend to act as attorney for said F. N. Clark, in May, 1851, and thence forward up to December, 1854, and undertake to defend, as counsel, certain suits in behalf of said Clark against him as defendant, brought by one B. C. Clark, William H. Y. Hackett, and others, then pending in the U. S. circuit court in said District of Columbia, against a certain award in favor of said F. N. Clark, amounting to $86,786 29? and if yea, whether or not said Hayes did employ said Lawrence as his associate in said defence of said F. N. Clark? and did said Lawrence pretend to act as attorney and counsel for said F. N. Clark, and what means or opportunities did you have for knowing the same?

5. Whether or not said F. N. Clark did employ one Rufus Choate, of said Boston, to act as counsel for him in said suit in said circuit court in District of Columbia, on or about and previous to September, 1851, and did or not said Choate act as said counsel, and was not said Choate at said time ready and willing to aid, advise, and counsel in behalf of said F. N. Clark?

6. Whether or not said John L. Hayes, on September, 1851, came to said city of Boston, for the purpose of forming and making (as attorney and counsel for said F. N. Clark) written answers for said F. N. Clark to sign to the petitions, bill and exhibits of said B. C. Clark, Wm. H. Y. Hackett et al., that were then filed in said U. S. circuit court in said District of Columbia, against said F. N. Clark?

7. Whether or not said F. N. Clark was absent from said Boston at said September, 1851; and whether or not said Hayes did apply to and notify you as the acting representative of said F. N. Clark, of his object in coming to said Boston, and require and ask

your aid in drafting said answers as aforesaid? If yea, did you so aid him, and for how long a time, and in what capacity did you so act?

8. Whether or not said Hayes appeared to be in any haste to prepare said answers, and made any representations as to any time being fixed by rule of said court, by and within which said answers were to be filed? If yea, what were they?

9. Whether or not you did inform said Hayes that said Choate was employed by said F. N. Clark as counsel, and that said Clark required each and all such answers, as were being prepared by him, to be exhibited and examined by said Choate?

10. Whether or not said Hayes did pretend to consult said Choate, and exhibit and have examined as aforesaid said answers? Were you or not present at any of such consultations or interviews between said Hayes and said Choate? If yea, when and where? If nay, were you or not prevented by said Hayes, by representations as to custom of counsel in such cases; and what were such representations?

11. Whether or not you was employed by said Hayes, while with him as copyist of the original drafts of the answers made by him to be signed by said F. N. Clark; and did or not said Hayes, in said answer, make and represent said B. C. Clark to be a creditor of said F. N. Clark, and offer to make an acknowledgment to that effect? If yea, did you or not object to the same, and inform him fully of the facts of the case to the contrary? And what answer and representations did said Hayes make to your objections? And did or not said Hayes make any and what alterations in his said answer relative to said fact?

12. Whether or not said Hayes did, on the 3d or 4th of October, 1851, carry with him from Boston the said answers so prepared by him for said F. N. Clark to sign? Whether or not said F. N. Clark did sign said answers to said bill, petitions and exhibits of said B. C. Clark, Hackett, and others? If yea, upon what representations, if any, that were made by said Hayes as to the approval of them by said Choate?

13. Whether or not said Hayes did represent to said F. N. Clark, that one F. T. Lally and one James S. Thayer had also commenced a suit in equity, in said U. S. circuit court, at said Washington, and had enjoined the payment of said award? If yea, what were said representations?

14. Whether or not said Hayes did request you, as agent for said F. N. Clark, to make an answer similar to that he had prepared in the case of some other party vs. said F. N. Clark, and cause said F. N. Clark to sign the same and to send the same to him, the said Hayes, at Washington?

15. Whether or not said Hayes had said bill of said Lally and Thayer vs. said F. N. Clark with him, and made any and what representations thereof?

16. Whether said Hayes made any representations as to the necessity of having the said answers prepared and sent to said Washington forthwith? If yea, what were they?

17. Whether or not said F. N. Clark did sign and send such answer of said bill of said Lally and Thayer so prepared by you? and if you have a copy thereof, please annex a copy of the same hereto.

18. Whether or not said Lally informed you, or said in your hearing, that he had paid any and what sum of money to said Hackett, or said Hayes, or said B. C. Clark, or any other person, or any persons in their behalf, to gain a settlement of his demand against said F. N. Clark? If yea, when and where, and before whom?

19. Whether or not, during the year 1854, and previous to November of said year, you did write to said Hayes and Lawrence, at the request of said F. N. Clark, to ask them to send to him, at Boston, a written or printed brief of the case aforesaid of B. C. Clark and others against said F. N. Clark, prepared by them, the said Hayes and Lawrence, as counsel for said F. N. Clark? If yea, how often did you so write, and was or not the same sent as requested?

20. Whether or not you did, on or about the latter part of November, 1854, go to said Washington, as agent for said F. N. Clark? If yea, please state for what purpose, and what you did.

21. Did you or not see the said Hayes and Lawrence, or either of them, relative to the said suit and said brief, and what was done with the same, and what instructions did you give to said counsel for said F. N. Clark, and what did they say and do in the matter? Did you or not instruct said Lawrence to deny that said F. N. Clark was a debtor of said B. C. Clark? If yea, what did he say to said instructions?

22. Whether or not said Hayes complained that the fees paid by said F. N. Clark were not sufficient, and that said F. N. Clark would lose his case, if he did not pay him, the said Hayes, $10,000 more than he had already paid him?

23. Whether or not you did, at the request of the said Lawrence, employ the printer to print the brief? And if yea, did you or not make any and what arrangements to have a copy of the same, when printed, sent to you at Boston?

24. Was or not the same ever sent? If yea, did said F. N. Clark see the same; and if so, what did he say and do in reference to the same?

25. Whether or not said F. N. Clark did object to the same, and in what particular; and did he notify his said counsel, Hayes and Lawrence, or either of them, thereof; and in what manner did he so notify them?

26. Whether or not, in November, 1854, you saw in the hands

and possession, and at the office of said Lawrence, certain records, or certified copies thereof, of the case of F. Clark vs. the Ocean Insurance Company, from the supreme judicial court of Massachusetts, held at Boston, and instructed him to file the same in his said case, and annex the same to said case of B. C. Clark and Hackett and others, against the said F. N. Clark? If yea, what answer did he make thereto?

27. Whether or not you saw in the hands and possession and at the office of said Lawrence, the copy of records from the supreme judicial court of Massachusetts, of the case of the brig Charles, which you instructed him to file in the said case of B. C. Clark and Hackett vs. said F. N. Clark? If yea, what promises and answer did said Lawrence make to you?

28. Whether or not any, and what time you had any, and what conversation with said Lawrence, relative to an amendment of records to be filed by B. C. Clark and others relative to the agency of one Causten for said F. N. Clark? If yea, what was said conversation? If you have any copy of the same, please annex the same.

29. Whether or not you have ever had any and what conversation with Michael and Charles Dougherty, or either of them, relative to the value of the claim of F. N. Clark vs. the government of Mexico? If yea, what was the same, and what representations did they, or either of them, make relative thereto?

30. Whether or not, on or about the 16th day of May, 1851, you went to the clerk's office of the U. S. district court in New Hampshire State, and inquired for the records of the case of F. N. Clark in bankruptcy? If yea, on what day, and who was clerk, and did you see them, or any part of them? Whether or not the said clerk withheld and falsely represented to you that any and what part of records were not on file, or did falsely conceal the appointment of any and what assignee, and as to proof of debt by any creditor, which had been previously made in said case? Please state all the conversation, and in what respect the said representations of said clerk were false, and how you know the same, and what opportunity did you have for so knowing?

31. Whether or not said clerk of said U. S. district court, in 1852, refused to show a petition which had been filed in said court by said Hackett, whereupon said court had ordered said F. N. Clark to appear and bring in a certain bill of sale? What, if any, representation did said clerk make to you concerning the taking of the same petition or order from the files of the said court by said Hackett?

32. Whether or not you made any statement to said Lawrence, relative to the bill of said Lally not being on file in the U. S. circuit court in the said District of Columbia? And if yea, what reply did the said Lawrence make to you respecting the same?

33. Whether or not you examined said records of said court, and what information did the clerk of said court make to you concerning the loss of any and what documents belonging to the files of the same, in the case of said B. C. Clark and others vs. said F. N. Clark?

34. Whether or not you have any documents or letters in relation to this matter, and which may be a benefit to the plaintiff? If so, please annex the same to your deposition.

35. Do you know one Joseph Hopkins Stewart, of New York? If yea, how long have you known him? Have you had any business transactions with him? Whether or not you know his reputation for truth and veracity? If yea, please state the same.

F. N. CLARK,
By his Att'y, G. D. GUILD.

Sept. 27, 1858. The defendant objects to all and singular the foregoing interrogatories, as informal, irrelevant and incompetent; but he will not x.

W. H. Y. HACKETT,
By his Att'y, WILLIAM H. HACKETT.

Circuit Court of the United States, for district of New Hampshire.

FERDINAND N. CLARK
vs.
WILLIAM H. Y. HACKETT. } In Equity.

Additional interrogatories to be proposed to Isaac P. Clark, of Roxbury, in the county of Norfolk, and State of Massachusetts, on behalf of the plaintiff.

36. If you shall have answered that you saw in the hands or possession of said A. H. Lawrence certain records or certified copies thereof, of the case of F. Clark vs. the Ocean Insurance Company, from the supreme judicial court of Massachusetts, held at Boston, please state whether or not the same was for the loss of the bark Two Friends and her cargo; and whether or not the same was, in your judgment, a valid claim for a total loss for the amount insured by said Ocean Insurance Office? Please state all you know about the same.

37. If you shall have answered yea to interrogatory No. 27, please state whether or not was a good and valid claim? Please state all you know about the same.

38. Whether or not said A. H. Lawrence and John L. Hayes withheld the brief in the case of B. C. Clark and Hackett against said F. N. Clark, pending in the Supreme Court of the United States, until late in November, 1854; and whether or not said F. N. Clark employed you to go to Washington after the same? If yea, please state all you know about the same; and state fully your instructions from said F. N. Clark.

39. And please state anything more in the premises that may be of benefit to this complainant.

F. N. CLARK,
By his Att'y, G. D. GUILD.

Sept. 25, 1858. The defendant objects to each and all of the foregoing interrogatories as informal, irrelevant and incompetent; but he will not x.

W. H. Y. HACKETT,
By his Att'y, WILLIAM H. HACKETT.

Deposition of Isaac P. Clark.

On this 6th day of October, A. D. 1858, appeared before me, C. W. Loring, a commissioner for the circuit court of the United States for the district of Massachusetts, Isaac P. Clark, a witness named in the annexed commission, to be examined in behalf of the complainant; and said Clark, being by me first carefully examined and cautioned, and sworn to testify the whole truth relative to the matters to which he was interrogated, did depose and say, in answer to the interrogatories in said commission proposed, in manner following:

Ans. 1. Thirty-six years. Roxbury. Commission agent.

2. I am acquainted, and am his nephew. I have had two interviews with the respondent on the same day.

3. I knew them both, while they were acting as counsel for my uncle, said F. N. Clark, in certain suits in U. S. circuit court and U. S. Supreme Court, at Washington city. I have done business with them in reference to said suits, in behalf of said F. N. Clark, with Lawrence, in Washington, with Hayes, both there and in Boston.

4. They both so acted. Lawrence was associated with Hayes, at the request of the latter. I have seen their written agreements as such counsel, and have seen them as counsel of said Clark.

5. I answer yes. Hon. Rufus Choate acted as counsel for a time; I do not know how long, but think nearly to the time of trial in C. court.

6. He did then come to Boston for that purpose.

7. Yes. Clark returned the day Hayes left for Washington. Hayes desired me to employ an assistant for him, while he was drafting the answers. I assisted him myself during three or four days, till the answers were finished.

8. He was in great haste, and said that unless the answers were all filed in Washington on or before the first Monday of October, said F. N. Clark would be thrown out of court by the rules of said court.

9. Yes.

10. Hayes did pretend to have such consultations with Mr. Choate. I was not present at any such consultation. I went with

Hayes to Mr. Choate's office to see him about the answers, at my request, after they were all prepared except Lally & Thayer's. Hayes requested me to remain outside, that he might see Mr. Choate in private, saying such was the custom of counsel. I remained outside not more than fifteen minutes, when Hayes returned, said that Mr. Choate had examined the answers and approved, and requested me to take them to F. N. Clark to be signed.

11. I was employed as copyist. Said Hayes gave me an answer to the B. C. Clark's bill to copy, in which it was admitted that F. N. Clark was the debtor of said B. C. Clark. I told him that F. N. Clark was on the contrary a creditor of B. C. Clark, and showed him the bankrupt proceedings wherein said B. C. Clark was put down as a debtor in the amount of $30,000. He said it would have a bad effect in court if F. N. Clark should deny owing these debts, and that the discharge in bankruptcy would be sufficient to defeat said B. C. Clark, and bill of sale of the assignee Palmer, and eighth section of the act of Congress. I told him said Ferdinand would not sign the answer as it was written, and that he must deny said B. C. Clark to be a creditor. He then wrote off another sheet, charging said Benjamin with being a debtor as per bankrupt proceedings, and also told him that the other suits were founded on fabricated drafts which said Ferdinand did not owe.

12. Said Ferdinand did sign them on the 2d of October, 1851, on the representation that Choate approved of them. Hayes took them to Washington on the same day, I believe—not giving time to said Clark to read them.

13. He did; but that owing to the shortness of the time, that he had not time to make out the answer; that it was similar to some of the other complaints, and that I must make out the answer, have it signed by said Ferdinand, and sent on; and advised me to admit in said answer that said Lally & Thayer were entitled to a part of said funds, and I made the answer as instructed.

14. Answered above.

15. He did not have it; he had left it in Washington; he said he thought it was among his papers when he left. I told him it was bad to answer a bill without having it; he said he knew the contents, and I must answer as he advised, which I did.

16. He said if the answer was not in Washington by the following Monday, that he could file it in court, that said Ferdinand would be defaulted.

17. He so signed, and I mailed it. I have lost my copy.

18. Lally told me in Boston, some time during the progress of the suit, that he had paid two thousand dollars, by which he had procured the release of his share of the above reward. F. N. Clark was present, I think.

19. I wrote as many as three or four to Lawrence, and also to Hayes, but how many to Hayes I do not remember, for that pur-

pose; but whether the said letters were all signed by me or by my father, Isaac Clark, I cannot say. The briefs were not sent. Mr. Clark wanted them, that Mr. Choate might examine and have them printed here, and I so wrote to said Hayes and Lawrence. I annex a copy of one to that effect signed by Isaac Clark.

20. I went there at said time to get the briefs in question. I saw and consulted with both Hayes and Lawrence in regard to the suits and brief. Lawrence said he had sent the briefs to Baltimore a week or two previous. I told him I came for them, that they might be examined by Choate. He said he expected them daily. I asked if he had a copy of them on his minutes. He said no. I waited several days, when said Lawrence said there would not be time to send them to Boston, and that I must engage and pay a printer in Washington to print them when they should return from Baltimore. I engaged Gibbens to print them, and to send to my address a copy of both briefs as soon as printed; and I requested Lawrence and Hayes to do the same, which they promised to do, but did not. Said Hayes told me he helped Lawrence prepare the brief. I told him I came on for them. Lawrence said the brief in Booth's case wasn't finished. I told him that F. N. Clark wanted him to deny in the brief in the case of Hackett and B. C. Clark that B. C. Clark was his creditor, and to charge him to be a debtor, which he, Lawrence, promised to do.

21. Is answered in the 20th.

22. Hayes did so complain and state. He told me F. N. Clark's case was good, but that he would lose unless he would give him (Hayes) $10,000, and that he ought to give Choate $15,000; and that then said Ferdinand would have enough left; and that said F. ought to authorize a compromise, and he could get him $40,000. I told him said F. wanted all that belonged to him.

23. Answered in 21st answer.

24. It was sent by mail from the printer's office to me. I gave them the same day to F. N. Clark; he examined them, and was quite excited about them, and said that Lawrence had admitted that B. C. Clark was a creditor, and that there were other fatal admissions and errors in the brief, and complained that Lawrence had not noticed his instructions, and said the brief should not be used, and telegraphed to that effect immediately to May, and wrote the same day to Lawrence and Hayes, forbidding them to use the briefs, but to have them corrected; and also wrote to the printer objecting to them.

25. Answered in No. 24.

26. I did, in the last of November or first of December, see said certified copies on the table of said Lawrence in his office, with other papers in said Clark and Hackett's case; and also court records of same court in case of Brig Charles and others—in all four certified court records, with an endorsed objection near the bottom

signed by J. M. Carlisle, counsel for B. C. Clark and Hackett, and are certified by J. A. Smith, clerk of U. S. circuit court, Washington, as being endorsed in said Carlisle's handwriting. I told him said Ferdinand wished him to file these records in the Supreme Court, in Hackett's and B. C. Clark's case. He replied he would, as the opposing counsel had applied to him as a favor to allow him to amend their record; and as a condition he would have them filed. I asked him what was the amendment they wanted. He said nothing of importance. I told him my uncle did not wish him to make any admissions which would affect his interest in the case, or allow them any such amendment. He replied he should not; that it was merely an alteration of form.

27. Answered in 26th.

28. Nothing was said referring to Causten. Lawrence did not seem disposed to tell me what the amendment was. All that he told is stated in my answer to 26th interrogatory. I annex a copy of the only amendment ever made to the record, and which I suppose to be the one about which he told me.

29. I have had several interviews with said Dougherties, from 1841 to 1850, and letters from said Charles H., which were given to be filed in the case of B. C. Clark and Hackett. Both always spoke of the claim as not worth prosecuting. At an interview with said Charles, when he was a police justice in New York, or said he was, he complained that he expended some forty dollars in getting papers translated and evidence collected, and that said Ferdinand had refused to pay any part of his expense, and that Causten refused to act as agent, unless he could have a cash payment of one hundred dollars from said Ferdinand, and fifty dollars from Dougherty; and that they (meaning himself and Michael) had never engaged said Causten, and that Causten had taken the papers off the files of government archives without authority, claiming the fifty dollars, which they should not pay; and he wished said Ferdinand to make Causten return them; that they were willing that Causten should act as agent if he would do it on a contingent fee. Michael said he had given the claim to his son Charles. Charles said he would have to send to Mexico for evidence to support the claim, and that said Ferdinand must advance him halt his future expenses in cash, before he would undertake it, and what he had already paid. I told him Ferdinand had abandoned the claim, and would advance no money. I had this interview on my own account, thinking to buy the claim if I should think it of any value, as I thought it could be got for a trifle; but gave it up. At another interview with said Charles H. D. at his office, said Clark was present. Said Charles was sealing up evidences to be sent to Washington in relation to this claim. This was in 1841 or 1842. He said it must be on file, or it would expire by limitation.

30. I went to said clerk's office at the request of F. N. Clark.

Albert R. Hatch was clerk. It was on the 19th May, 1851. I told him I wanted copies of all the papers on file in the proceedings of said Clark in bankruptcy. He asked me whom I represented. I told him F. Clark. He said he was engaged that evening, and it was too late to commence. I asked permission to take the papers to the hotel that evening to copy. He refused, saying he could not let any of the papers go out of the office. He loaned me, at my request, a copy of the rules of court, and inquired of me who bought the assets of said Clark, and at what price they were sold, and informed me there had been some stir about these papers within a few days. I inquired where John Palmer, the assignee, lived. He said he was dead, and informed me that John L. Hayes, the former clerk of the court, was in Washington practising law, and would be a good person for said Ferdinand Clark to employ, as he knew all about the proceedings in bankruptcy of said Clark. The next morning, 20th May, I went to said Hatch's office, and asked him to let me have the papers in said case to examine; he refused, saying he would let me have one at a time, and I was to return each before receiving another; that he had been requested by other persons not to let any of the papers in this case to go out of his hands. I copied all he gave me in this way, he furnishing me with printed blanks. When I had copied all he said there were on file, I had him read and certify to them as clerk of court. I inquired if there was nothing more on file. He said there was not. I returned to Boston the same night, namely, the night of the 20th, having been in the office till late in the afternoon. I have since been informed, and do verily believe, that there were then on file in said office, a petition of B. C. Clark and Charles G. Nazro, dated 19th May, 1851, and a decree of said court of the same date, appoining Hackett as assignee of said F. Clark in bankruptcy, and an order of said court for said Hackett to give bonds as assignee; and I believe that the said Hatch had knowledge and possession of the same, and withheld and concealed them from me, and said Ferdinand and myself were in ignorance of their existence till some time afterwards, when the said Hackett's proceedings were instituted, and copies received from Washington.

31. Said clerk did so refuse in March, 1852. I went to his office by request of said Ferdinand, and at my request said Hatch handed me all the papers in said Clark's case. On examining them, I found an order of said court of November 3, 1851, notifying Clark to appear in answer to a petition of Hackett, "on the third Tuesday of December, at Exeter, fifteen days' notice to be given." I inquired of said Hatch for the petition; he said it was not on file, but had been withdrawn by Hackett. I asked what the petition was. He said it was to order the bankrupt to return to the court a fraudulent bill of sale. I inquired of said Hatch if he had notified said Clark according to said order. He replied

that that was for Hackett to do. I asked if Hackett had done it. He replied no. I asked if Hackett had any right to withdraw a petition after it had been on file, and acted on by the court. He replied he supposed the court could order its return. I then procured from him a copy of the order of court, and a certificate, which reads: "A true copy of the original order, the petition not being on file.

"Witness my hand and seal of said court, this 19 March, 1852."

32. I told Lawrence said bill was not on file, and that the clerk could not find it. He seemed surprised, and said "he was damned glad of it."

33. I examined the said records, and could not find the bill of complaint of Lally and Thayer, as represented by Hayes, or the answer of said Ferdinand Clark, which I had made. The clerk and his assistant made long and diligent search at different times, examining various places and papers, and inquired of the opposing counsel for them, but no trace could be discovered.

34. I annex A. P. Clark's, March 5, '55, to me; certified copy of Michael Dougherty and J. H. Stewart's answer to F. Clark's bill in equity in U. S. circuit court for district New Hampshire, sworn to 20th August, 1856; do. do. of B. C. Clark's petition in U. S. cir. court for District Columbia, dated May 15, 1851; W. H. Y. Hackett's petition, 30th May, 1851, in same court; original letter of Rufus Choate to F. N. Clark, Dec. 7, 1853; do. do. Nov. 4; printed brief in case of B. C. Clark & Hackett vs. F. N. Clark, December term U. S. Supreme Court, 1854; Comptroller of U. S. Treasurer, March 30, 1855, to Isaac Clark; statement of award to Lally & Thayer and Dougherty; agreement of J. M. Carlisle and John L. Hayes to take testimony in said suit; certified copy from F. Clark's letter-book (copied by me) of F. Clark's abandonment for total loss of barque Two Friends, and cargo of salt; do. Ocean Insurance Co., 22d May, 1834; John Palmer's bill of sale (certified copy,) differing from the printed record.

35. I first knew him in 1839; had no business with him personally; have for others, and been on friendly terms with him, but not since '43. His reputation for truth, &c., is bad.

36. Said claim against said Ocean Ins. Co. was for loss of said barque and cargo. I believe it was a valid claim for a total loss. I saw a person who was in Monte Video at the time of the wreck; he told me he knew all about it, and that the company would have to pay for a total loss; that J. S. Tyler, of Boston, had called on him, in behalf of B. C. Clark, for a witness in the case. I do not remember his name. He was a furniture dealer.

37. I know nothing about the claim.

38. They did so withhold said briefs. I have stated the same in previous answers.

39. In the fall of 1849, (a new board of commission having been

appointed, and our government having guaranteed the payment of the awards to a certain extent,) I went to F. N. Clark, and advised and urged him to prosecute the claim. He objected; he had no confidence in it, and showed me a printed pamphlet of other somewhat similar claims, which had been thrown out by the former board of commission, one of which I remember said J. A. Caustin was agent for, and made an able defence. I offered him a hundred dollars for the claim. This stimulated him, and he partially consented to carry it on, if it could be done without his being obliged to advance one hundred dollars, claimed by Caustin. I subsequently wrote several letters to Causten at Washington, signed by Isaac Clark. He was offered the agency, but informed the hundred dollars he claimed could not be paid him, for Clark (F.) was poor. He, Causten, subsequently abandoned it, and returned the papers and evidences which he had withheld, into the government archives; and said Isaac Clark was the means of then finding out and engaging said Lally, who was the agent in prosecuting said claim to its recovery.

Also, said Ferdinand Clark was in feeble health from 1841 to 1850, unable to fully attend to his own business. Particularly in the year 1842 this was the case. During this year he was much harassed by parties claiming to be creditors, at whose suit he was arrested, in November or December, while in Boston, by the U. S. marshal; but at that time he was so feeble as to be unfit to be committed, and a keeper was placed over him, which keeper was withdrawn, because of said Clark's feeble health, I believe.

ISAAC P. CLARK.

UNITED STATES OF AMERICA.

U. S. Circuit Court for the district of New Hampshire.

FERDINAND N. CLARK
vs.
WILLIAM H. Y. HACKETT.

Interrogatories to be proposed to Charlotte E. Field, wife of Ozias Field, of Roxbury, in the State of Massachusetts, and others, citizens of the State of Massachusetts, to be examined in the behalf of the above named plaintiff.

Interrogatories to be answered by Mrs. Charlotte E. Field, of Roxbury:

1. What is your name, age, and residence?

2. Do you know Michael Dougherty, Charles H. Dougherty, and Joseph Hopkins Stewart, all of the city of New York; if yea, how long have you known them, or either of them, and where?

3. Whether or not the said Michael Dougherty called at the store of your husband, in said Roxbury, some time in the month of April, or of May, 1851, to see said Ferdinand N. Clark? If yea, please state whether or not any conversation took place between you and said Michael, or between your husband and said Michael, in your hearing, concerning an award by the board of commissioners on Mexican claims, in favor of this plaintiff; if yea, please state the same fully and particularly.

4. Whether or not said Charles H. Dougherty called at your house subsequent to said Michael's calling? If so, please state the time when; and whether or not anything was said by him to you, or in your presence and hearing, about the said award to this plaintiff; and if so, please state what was so said by him fully and particularly.

5. If you shall have answered that you know Joseph Hopkins Stewart, please state what you know relative to his character, and reputation for truth and veracity, if anything.

Interrogatories to be proposed to Henry N. Clark, of Boston, in the State of Massachusetts:

1. What is your age, occupation, name, and residence?

2. Whether or not you are acquainted with the plaintiff in this action? If yea, state how long you have so known him, and where.

3. Whether or not you have been acquainted with the plaintiff's business? If yea, please state for how long a time.

4. Whether or not you know Michael Dougherty, Charles H. Dougherty, and Joseph Hopkins Stewart, all of the city of New York; if yea, how long have you known them, or either of them?

5. Whether or not, to your knowledge, this said Michael Dougherty and said F. N. Clark had, in the year 1850, a claim against the republic of Mexico, which had not been presented to the board of commissioners, then sitting at Washington, on the claims against said Mexico; if yea, whether or not you undertook to prosecute the interest of this plaintiff therein before said board of commissioners, and whether or not you visited the said Michael and Charles H. Dougherty, at New York, to consult them in relation to the prosecution of the same, in conjunction with said Michael and Charles H. Dougherty? If yea, please state when you so consulted with them, and how long the said board of commissioners had then been in session; please state whether or not there were any difficulties existing between one James H. Caustin and the plaintiff in this action, and the said Dougherties, which, up to that time, had prevented the prosecution of these claims; if yea, please state what those difficulties were.

6. Whether or not, of your knowledge, said James H. Caustin was in possession of the evidence and vouchers necessary to prove said claim before the commissioners; and whether or not did said Caustin claim of said Dougherties the sum of fifty dollars, and of said F. N. Clark the sum of one hundred dollars, before he would permit the proofs to be presented before the commissioners; and whether or not you agreed with said plaintiff to pay the amount demanded of him by said Caustin, if the said Dougherties would pay the amount required of them by said Caustin, and they, the said Dougherties, should think favorable of prosecuting said claims? Please answer fully and particularly.

7. If you shall have answered that you went to New York to consult with the said Dougherties, please state fully all the conversations you had, if any, with either or both of said Dougherties, concerning the said claim; and state whether or not, after said consultation with said Dougherties, you abandoned the prosecution of said claim; if yea, please give your reasons for abandoning the same fully.

8. Whether or not was it agreed between you and the said F. N. Clark, if you should advance the one hundred dollars to said Caustin, and any other incidental charges in the prosecution of the said claim, that you was to look solely to the award which might be made in favor of said F. N. Clark, for the reimbursement of the same; and whether or not you were to have a certain stipulated proportion of the amount awarded for your services and risk?

9. Whether or not you were in the city of New York in the fall of 1841, and the following winter and spring, in the employment of this plaintiff and J. Hopkins Stewart, or either of them? If you should answer yea, please state what was the general appearance of said J. Hopkins Stewart towards this plaintiff in his business transactions for him; whether or not he appeared friendly to said Clark; and whether or not he appeared to have the confidence of said Clark in his, the said Clark's, business transactions; and whether or not the said Stewart used his influence to convince said Clark that there was a combination in the city of New York and Boston to defraud him, and that he, Stewart, was his only real friend?

10. Whether or not said Stewart, to your knowledge, collected large sums of money for said F. N. Clark, during the years 1841 and 1842? Did or not said Stewart act as said F. N. Clark's attorney, in defence of certain suits in the courts of New York city? If yea, please state the nature of said suits, and all you know about them.

11. Whether or not you saw Mr. Isaac Clark in New York city in 1841 and 1842? And if yea, please state whether or not said Stewart endeavored to prejudice you and the said F. N. Clark against the said Isaac Clark at that time; please state fully and particularly all you know about it.

12. During the time you were in New York, in 1841 and 1842, what was the state of Mr. Ferdinand N. Clark's health?

13. Whether or not the said Stewart retained a large sum of money in his hands, which belonged to said F. N. Clark?

14. What is the general reputation, if you know, of the said J. Hopkins Stewart, for truth and veracity?

15. Whether or not you know Wm. H. Y. Hackett and Albert R. Hatch, both of Portsmouth, New Hampshire, and whether or not you were present in said Portsmouth at a sale at auction of certain assets in bankruptcy, in the month of May, 1857, belonging to the estate of this plaintiff? If yea, please state who were present, and whether or not said Hackett and Hatch were present? If yea, please state all that was said and done by them; state the same fully.

Interrogatories to be proposed to Honorable Peter S. Wheelock, of Roxbury, in said State of Massachusetts:

1. What is your age, occupation, name, and place of residence?

2. Whether or not you were employed by said F. N. Clark, as counsel, in the U. S. circuit and district courts of the district of New Hampshire, to defend a suit of said Wm. H. Y. Hackett and Benjamin C. Clark, against said F. N. Clark, in the said district court, and to prosecute the suit of said F. N. Clark in equity against said Hackett and others, in the said circuit courts, during the year 1856, and until 1857?

3. Whether or not you had at any time a conversation with the said Wm. H. Y. Hackett, about the proceedings in bankruptcy of said F. N. Clark; and whethor or not, if you answer yea, did said Hackett represent himself to be friendly to said Clark, and desirous to settle and close the business by compromise with said Clark? Whether or not said Hackett informed you that one John L. Hayes, of Washington, the former counsel of said F. N. Clark, was offended with him, the said Hackett, because he, the said Hackett, had not succeeded in obtaining an order of distribution of the award? Please answer fully and particularly.

4. Whether or not, during the time you continued to act as the counsel of the said F. N. Clark, any propositions were made to you, directly or indirectly, to compromise and settle the suits of said F. N. Clark and said Hackett? If yea, state when, and where, and by whom such offers or overtures were made, either directly or indirectly; and state fully and particularly the nature of said propositions.

5. Whether or not, while you were acting as counsel for said F. N. Clark, any attorneys at law or other persons called upon you, and attempted to dissuade you from continuing to act as such? If yea, please state who they were, and state fully what was said by such persons.

Interrogatories to be proposed to Eli Baldwin, of Boston, in the said State of Massachusetts:

1. What is your name, age, occupation and residence?

2. Do you know Benjamin C. Blark, of Boston; and if yea, how long have you known him?

3. Whether or not you called upon said Benjamin C. Clark some time during the year 1851, or at some time subsequent to said 1851, in relation to compromising certain suits pending at Washington, in the U. S. circuit court, by said B. C. Clark and others against the plaintiff in this suit, whose award, as allowed by the commissioners on Mexican claims, had been enjoined therein? If yea, at whose request did you so call; whether or not it was at the request of Joseph Hopkins Stewart, of New York? If yea, please state all that took place between you and said B. C. Clark, at such interview or interviews, fully.

4. Whether or not do you know Joseph Hopkins Stewart, of New York, and whether or not you have ever had any business with him? If yea, please state the nature of your acquaintance and business with said Stewart.

5. Whether or not you were employed by the said Joseph Hopkins Stewart, at some time since the year 1851, to call upon one Isaac Clark, and one Isaac P. Clark, both of Boston; whether or not you did so call upon the said Isaac Clark and Isaac P. Clark? If so, when; and whether or not were you authorized by said Joseph Hopkins Stewart to compromise certain suits pending in circuit court at Washington, against the answer of the commissioners on Mexican claims to Ferdinand N. Clark? If yea, please state when you were so authorized, and the nature of your authority and instructions; and if the same are in writing, please annex the same to your deposition; and if not in writing, please state fully and particularly all said authority and instructions.

6. Whether or not the said Joseph Hopkins Stewart, at some time during or since the year 1851, informed you that he, Stewart, controlled and was interested in the whole or in part in all the suits, except the suit of B. C. Clark, which were pending in the circuit courts or Supreme Court of the United States, at Washington, against this plaintiff's award of $86,786 29, including the suit of William A. Booth, of New York?

7. Whether or not did you, or any of your friends, to your knowledge, advance at any time money to the said Stewart upon the aforesaid claims pending at Washington against said award? If yea, please state the amount so advanced and by whom.

8. Have you any letters or documents in your possession relating to these suits? If yea, please annex the same to your deposition.

9. Do you know what the reputation of the said Joseph Hopkins Stewart is for truth and varacity? If yea, please state the same.

Interrogatories to be proposed to James P. Flint, of Boston, in said State of Massachusetts, on behalf of the plaintiff.

1. What is your name, age, occupation, and residence?

2. Whether or not you were a member of the firm of P. & C. Flint & Company, of Boston, in the years 1833 and 1834? If yea, please state who constituted said firm, and whether or not the said firm had money, and large transactions with the house of Ferdinand Clark, of Havana, during those two years, and whether or not said firm suspended payment some time in the year 1834. If yea, please state when.

2. Whether or not your said firm secured a letter of credit from T. W. Ward, of Boston, agent of Baring Brothers & Company, London, for 3,000 pounds sterling, approved, to be drawn for by Ferdinand Clark, in Havana, for your account? If yea, was or not the same drawn for by said Clark?

3. Whether or not, at the time of the supension of your said firm of P. & C. Flint & Co., the said Ferdinand Clark was in Boston? If yea, was or not said Clark, soon after your said suspension, sued by T. Ward, as agent for Baring Brothers & Company, for the three thousand pounds sterling, mentioned in preceding interrogatory? If yea, did or not Benjamin C. Clark and John Preston, both of Boston, become his bail, if of your own knowledge?

4. Whether or not, at the time of the suspension of your said firm, there was not a large amount of property in vessels and cargoes in Havana, and on the way to Havana, consigned to said Ferdinand Clark?

5. Whether or not an arrangement was entered into by and between Charles W. Cartwright and Enoch Train, as assignees in bankruptcy of your said firm of P. & C. Flint & Co., of the one part, and said Ferdinand Clark, of the other part, releasing to said Clark certain property in Havana, from the proceeds of which he was to pay said three thousand pounds sterling to said Baring Brothers & Company? If yea, was or not the same put in writing? and if yea, and you have a copy of it, please annex the same to your deposition; and in whose handwriting the said copy is, if you know; whether or not it is in the handwriting of one of the clerks in your employment?

6. Whether or not you were a director in the Ocean Insurance Company of Boston in 1833 and 1834? If yea, whether or not were Benjamin C. Clark and John Preston also directors of said company, and large stockholders thereof? Please state if you know where the books of said Ocean Insurance Company now are; if yea, please examine the same, and state what amount of stock stood in the names of said B. C. Clark and John Preston.

7. Do you or not know whether the bark Two Friends, of Boston, was insured at said Ocean Insurance Office in 1833 and 1834, and whether or not she was shipwrecked near Monte Video, in

South America? and if yea, did or not the owners claim for a total loss against said Ocean Insurance Company? and state, if you know, in whose name she was insured, at the time of her shipwreck.

8. Whether or not you saw the wreck of said bark Two Friends after her shipwreck? If yea, please state whether or not, in your judgment, her condition was such as to justify her owner in claiming for a total loss.

9. Whether or not, at the time of your suspension, the said Ferdinand Clark was confined at Boston by sickness? If yea, please state the nature of said sickness, if you know, and how long had it continued?

10. Whether or not you have frequently been at Havana since the suspension of the firm of P. and C. Flint & Co., and prior to 1841? and if yea, whether or not you frequently saw the said Ferdinand Clark there? and if yea, please state what was the general state of his health, to your knowledge, prior to said 1841; and if you know, please state what his health has been since said 1841.

Interrogatories to be proposed to Benjamin Bruce, of Boston, in said State of Massachusetts, in behalf of said plaintiff:

1. What is your name, age, occupation, and residence?

2. Whether or not you were the book-keeper of P. and C. Flint & Co., of Boston, in 1833 and 1834?

3. Whether or not you drew or copied an agreement between the assignees in bankruptcy of said P. and C. Flint & Co., and Ferdinand Clark? If yea, please state all you know about the matter, and if you have a copy of said agreement, please annex the same.

F. N. CLARK,
By his Att'y, G. D. GUILD.

Sept. 25, 1858. The defendant objects to all and singular the foregoing interrogatories as informal, leading, incompetent, and irrelevant, but will not x.

W. H. Y. HACKETT,
By his Att'y, WILLIAM H. HACKETT.

Deposition of P. S. Wheelock.

On this 1st day of October, 1858, appeared before me, C. W. Loring, a commissioner of the circuit court for the district of Massachusetts, P. S. Wheelock, a witness named in the annexed commission, who, being carefully examined and cautioned, and sworn to testify the whole truth in the matters to which he was interrogated, did depose and say, in answer to the interrogatories in said commission proposed, as follows:

To the 1st interrogatory: I am fifty years old; I am justice of

the police court and counsellor at law, and I reside in the city of Roxbury.

To the 2d interrogatory: I was employed in the suits, and I believe the time is correct. I think it was in 1855 and part of 1856, on reflection.

To the 3d interrogatory: I had conversation with Mr. Hackett about the proceeding in bankruptcy. I never knew Mr. Hackett to express himself as being otherwise than friendly to Mr. Clark, that I remember. He always appeared to be anxious to settle and close the business. He made no proposition to compromise that I now recollect. I think he did say that Mr. Hayes was offended with him because he did not bring the matter to a close and press a distribution.

To the 4th interrogatory: There was no distinct proposition of settlement made by any one to me, but a Mr. Pierce, of Boston, called on me one day at my office, and asked me if the matter could not be compromised, and he stated that it was a pity to have the matter lay along in court so; that the money was doing no one any good, and that he thought he could bring about a compromise, if I thought there was any possibility of getting a compromise. I told him that I had been informed that there was no chance of a compromise by my client, but that I would see him, and see him, Pierce, again. I soon ascertained that no proposition could be made on our part, and it was unnecessary to receive any proposition on the other side for a compromise.

To the 5th interrogatory: I don't recollect of any attorney's calling on me and attempting to dissuade me from continuing as counsel. Persons did call upon me and express an opinion that the suit had better be compromised. I can't recollect the language that was used.

P. S. WHEELOCK.

Deposition of Eli Baldwin.

On the 1st October, 1858, appeared before me, C. W. Loring, a commissioner of the circuit court for the district of Massachusetts, Eli Baldwin, named in the annexed commission, who, being carefully examined and cautioned to testify the whole truth, did depose and say, in answer to the interrogatories in said commission, as follows:

Answer to 1st interrogatory. Eli Baldwin; 35 years; reside at Roxbury; am a dealer in fancy dry goods.

2. I have known him slightly; I first saw him some three years since.

3. I called on him in relation thereto, in 1855, as nearly as I can remember, at the request of C. H. Stewart, or J. H. Stewart, who is attorney in this case. My object in calling on Clark was to gather information in behalf of Stewart as to the future proceedings. I inquired for Ferdinand Clark, and there was some hesi-

tation about telling me where he was, on the part of persons of whom I made the inquiry. I do not remember any of the particulars of the conversation which took place between B. C. Clark and myself.

4. I know him only from his connection with this case, of which I first heard from him. I have never had any other business with him.

5. I was so employed. I called on them during the year 1855, at the time of my interview with B. C. Clark. I had no authority to compromise, and no instructions of any kind in writing.

6. He did so inform me.

7. I never advanced any myself, nor did any of my friends, so far as I know.

8. I have no such letter.

9. I should say, not good; I cannot believe what he says.

ELI BALDWIN.

Deposition of Henry N. Clark.

On the 1st day of October, 1858, appeared before me, C. W. Loring, a commissioner for the circuit court of the United States for the district of Massachusetts, Henry N. Clark, a witness named in the annexed commission, who, being first carefully examined and cautioned and sworn to testify the whole truth relative to the matters to which he was interrogated, did depose and say, in answer to the interrogatories in said commission, as follows:

Answer to 1st interrogatory. H. N. Clark; 36 years; lumber dealer; Boston.

2. I have known him since I was a boy, in Boston, and Havana and New York.

3. I have been acquainted with his business since 1839.

4. I know them all. I have known Stewart since 1841 or 1842, and both Dougherties since February or March, 1850.

5. They had such claim, and I so undertook to prosecute; I visited the Dougherties for that purpose. I consulted with them in February or March, 1850. How long the board of commissioners had been in session, I do not know. There was some difficulty. Mr. Caustin claimed a hundred dollars from Mr. Clark, and fifty dollars from Capt. Dougherty.

6. He was in possession of some of the papers necessary to prove the claim of Clark, &c. He did so claim. I did so agree.

7. I cannot state the conversation in full, but the substance on their part was, that they had spent some forty dollars in procuring evidence in support of the claim, and that they were anxious to get it back. I then abandoned the prosecution of the claim, because, from our conversations, I did not think they had much confidence in the claim; and I think they stated that a similar claim had been rejected by a previous commission.

8. It was so agreed between us. I was to have such certain stipulated amount.

9. I was there at that time, in the employ of Mr. Clark, and a portion of the time assisted Mr. Stewart in Mr. Clark's business. Stewart appeared to be friendly to Clark, and to have his confidence, and he used his influence to so convince him.

10. Stewart did collect such sums of money, and he acted as Clark's attorney in suits brought against Clark in regard to business of the house of Clark & Co. of New York, and others, of which I do not remember the nature.

11. I saw him at that time, and Stewart endeavored so to prejudice F. N. Clark and myself, by talking against him—against his business character, in respect of capacity principally; he also charged him with being untruthful; and I have also heard him call him a rascal.

12. Mr. Clark's health at that time was very feeble.

13. Stewart did retain such sum of money.

14. His general reputation is bad.

15. I was at the sale; and there, for the first time to my knowledge, saw said Hackett and Hatch. They were the only persons present besides myself, the auctioneer, and a young man whom I do not know. Mr. Hackett stated that he did not give a warrantee title, but sold under the order of the court. They were first put up separately, and afterwards sold together to Mr. Hatch, for sixteen dollars for the lot. I bid twelve for them.

HENRY N. CLARK.

Deposition of James P. Flint.

On this 30th day of September, A. D. 1858, appeared before me, C. W. Loring, a commissioner for the circuit court of the United States for the district of Massachusetts, James P. Flint, a witness named in the annexed commission, to be examined in behalf of the complainant; and the said Flint being by me first carefully examined, and cautioned and sworn to testify the whole truth relative to the matters he was interrogated to, did depose and say in answer to the interrogatories in said commission, proposed for the complainant, as follows:

Answer to 1st interrogatory. James P. Flint; 55 years; merchant; Medford.

Answer to 2d interrogatory. I was; myself, Jacob C. Flint and Sherman G. Hill constituted it. We had such transactions. It did suspend in the early part of the year, either in January or February.

Answer to 2d interrogatory. (2.) We did. It was so drawn.

3. He was at Boston at that time. I believe he was so sued, though I was away at the time. I cannot say.

4. There was.

5. There was such an arrangement made in writing. I have a copy, which I annex. The original copy is drawn up by A. C. Gale, then our clerk, and is in his handwriting. (Paper annexed, marked A (c. m.)

6. I was. They were directors; how large stockholders they might have been, I cannot say. Where the books are, I do not know.

7. It was. She was so wrecked. They so claimed. In the name of Ferdinand Clark.

8. I saw the wreck. In my judgment they were justified in so claiming.

9. He was; he had a lung fever. Several months.

10. Yes. I frequently saw him; he has been complaining ever since his first sickness.

JAMES P. FLINT.

Deposition of Charlotte E. Field.

On the 30th day of September, A. D. 1858, appeared before me, C. W. Loring, a commissioner for the circuit court of the United States for the district of Massachusetts, Charlotte E. Field, a witness named in the annexed commission, to be examined on behalf of the complainant; and the said Field being by me first carefully examined, and cautioned and sworn to testify to the whole truth relative to the matters she was interrogated to, did depose and say, in answer to the interrogatories in said commission proposed for the complainant, as follows:

To the 1st interrogatory. My name is Charlotte E. Field; my age is forty-three years; I reside in Roxbury, in the State of Massachusetts.

To the 2d interrogatory. I know them all. I have known Mr. Michael Dougherty seven years, at Roxbury. I saw Charles H. Dougherty about three years ago, at Roxbury. I have known Mr. Stewart at Roxbury and Boston, since 1841.

To the 3d interrogatory. He did then call at the store of my husband about the last of April or first of May, 1851, and inquired for Mr. Ferdinand N. Clark. I was present, and told him he was absent in the country; he said he wished to see him very much. He then said the board of commissioners to settle claims of American citizens against Mexico had awarded Mr. Clark upwards of eighty thousand dollars, for the loss of the cargo of schooner Louisiana, which award, he said, Mr. Clark could not have obtained without the aid of himself and his son, and therefore he claimed that he was entitled to a good share of said award; and besides, Mr. Clark was a single gentleman, without a family, and could not need so much money. My husband then told him Mr. Clark had two sisters, one a widow and one a single lady,

who both stood in need of assistance. He said very little more, and left for Boston immediately.

To the 4th interrogatory. He called some two or three years since, and inquired for Mr. Clark. He asked several questions about Mr. Clark. I don't recollect that he spoke about the award particularly. I told him Mr. Clark lived in Boston, and he inquired whether he was in business in Boston, and was a relative of mine.

To the 5th interrogatory. I have always heard his character for truth and veracity to be very bad. I have often heard it spoken of.

CHARLOTTE E. FIELD.

I, Albert R. Hatch, clerk of the circuit court of the United States for the district of New Hampshire, do certify that the foregoing are copies of the depositions used in the cause Ferdinand N. Clark vs. Wm. H. Y. Hackett, heretofore pending in the circuit court of the United States for the district of New Hampshire.

Witness my hand and the seal of said court, this second day of [SEAL.] December, A. D. 1857.

ALBERT R. HATCH, *Clerk*.

Filed 10th Dec'r, 1859.

SUPREME COURT OF THE U. S.

DECEMBER TERM, 1861.

FERDINAND N. CLARK, appellant, *vs.* WM. H. Y. HACKETT.

Abstract of the Case, and points filed with the Clerk under the 21st rule.

This is an appeal from the Circuit Court of the U. S. for the District of N. H. The appellant claims to recover the money ordered by this Court to be paid to the Defts. in suit, Clark and Hackett *vs.* F. N. Clark (reported 17 Howard, 315; 21 Curtis, 520), for the alleged fraud of the Defts. and B. C. Clark, one of the creditors, in obtaining the decision in this Court and the U. S. Circuit Court of the District of Columbia.

The Deft. relies upon the following points.

I. That this suit is barred by the statute of limitations.

The former suit in this Court was determined Dec. Term, 1854; the fund paid into the Registry of the U. S. District Court for the N. H. District, May 5, 1855. The Bill in this suit was sworn to June 11, 1857, and filed June 13, 1857. The Deft. will rely upon the Bankrupt act of August, 1841, and the limitation therein contained.

II. That the former assignee, Jno. Palmer, under whom F. N. Clark claims, at no time had a license to sell the claim against the Republic of Mexico, out of which this fund arose.

Proof: the printed records of said suit, B. C. Clark and Wm. H. Y. Hackett *vs.* F. N. Clark.

III. That every material allegation in the Complainants' Bill is denied under oath by the Defts., and neither of them is supported by the Complainants' proof.

IV. That the original suit having been decided against the appellant, by reason of his fraud in bankruptcy, he can have no status in a Court of Equity as to the subject matter of this suit.

V. Even if the allegations in the bill were true, the appellant would be entitled to no relief in Equity against innocent and bona fide creditors.

VI. A suit for the same alleged cause and between the same parties, before bringing this suit, had been heard and defeated in the first Circuit.

2 Story Eq. Com. pp. 739, sec. 1523.

VII. This is substantially a suit to view and reverse a decision of the Supreme Court of the U. S.

Southend *vs.* Russell, 16 Howard, 547.

W. H. Y. HACKETT, pro se.

MR. HACKETT'S ARGUMENT:

CLARK VS. HACKETT.

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ARGUMENT

OF

WILLIAM H. Y. HACKETT,

PRO SE,

IN THE SUIT

F. N. CLARK vs. HACKETT,

BEFORE THE

SUPREME COURT OF THE UNITED STATES,

DECEMBER TERM, 1860.

PORTSMOUTH:
PRINTED AT THE PORTSMOUTH JOURNAL OFFICE.
1860.

ARGUMENT.

May it please your Honors,—

This suit comes here by appeal from the United States Circuit Court for the District of New Hampshire. I beg leave to refer to the opinion of Judge Clifford, and to a certified copy of the Exhibits made at the hearing in the Court below, hereto annexed.

I. My first answer is, that this suit is barred by the statute limitations, or the provisions of the bankrupt act.—The suit in Equity, Benjamin C. Clark and W. H. Y. Hackett v. Ferdinand Clark and Thomas Corwin, originally commenced in the Circuit Court of the United States for the District of Columbia, was finally determined in and by the Supreme Court of the United States, December T. 1854, and the fund, to recover back which this suit is brought, was paid into the District Court of New Hampshire May 7, 1855.

The Complainants' Bill in this suit was sworn to June 11th 1857, and filed June 13, 1857.

The Bankrupt Act of August 1841, contains the following provision:—"No suit at law or in equity shall in any case be maintainable by or against such assignee or by or

against any person claiming an adverse interest touching the property or rights of property aforesaid in any Court whatever, unless the same shall be brought within two years after the declaration and decree of bankruptcy, or after the cause of suit shall first have accrued." Bankrupt Act, Aug. 19, 1841, Sec. 8.

The foregoing provisions of the Bankrupt Act are recited and relied upon in the Defendants' answer, as a full defence to this suit.

The time of paying the fund into Court is proved by the record of the District Court. That this fact may be proved by a copy of record as an exhibit, I refer to II. DANIELS' CHANCERY PRACTICE 442 §.

This Complainant claims this fund by virtue of a purchase at a pretended sale of the former assignee and his claim is clearly within the scope of the before recited provisions of the Bankrupt Act. These provisions are peremptory.

What answer can be made to this defence? If it be conceded that this provision of the Bankrupt Act did not commence to run until F. N. Clark discovered the fraud which is the alleged basis of this suit, this concession will not aid the Complainant. He does not allege or prove any newly discovered evidence, nor that he now knows or can prove any other fact or circumstance which he did not know or could not have proved when the money was paid into Court.

II. The Complainants' allegation of fraud, even if true, will not sustain this Bill.

1. Because the judgment of B. C. Clark against F. N. Clark cannot be enquired into in this collateral manner;

for the purposes of the trial of this appeal if it be considered at all, it must be regarded as a valid judgment.

2. The Judge of the U. S. District Court could appoint an assignee in Clark's case in bankruptcy whenever there was occasion upon his own notion without, or in opposition to, or upon petition of actual or judgment creditors.

Besides this Court will not enquire into the regularity of the Assignee's appointment. Until he is removed this Court will regard his appointment as valid.

3. If it were competent for this Court to enquire into the validity of the judgment, B. C. Clark v. F. N. Clark, and this Court, upon such enquiry, should find that judgment void, such a result would avail the Complainant nothing, because there are other creditors who have proved their debts against said Clark and whose debts are not disputed by him, the aggregate of which after deducting B. C. Clark's judgment and B. C. Clark & Co.'s claim, is more than the amount received by the defendant or assignee, a list of which debts is annexed to and made a part of defendants' answer in this suit.

III. The Circuit Court of the United States for the District of Columbia decided the suit against said F. N. Clark, not by reason of any conspiracy against him or fraud of his counsel, but in consequeuce of his own fraud in his proceedings in Bankruptcy. This is alleged in the Defendants' answer, is responsive to the Complainants' Bill, is proved by the record which is made a part of the Defendant's answer in this case; and this decision was affirmed upon the same ground by the Supreme Court of the United States. This is proved by the opinion of the Court.

17 HOWARD, 315. 21 CURTIS, 520.

So if the said Charles H. Dougherty, Michael Dougherty, Joseph Hopkins Stewart, John L. Hayes, Benjamin C. Clark and William H. Y. Hackett, any or all of them intending and combining to defraud the said Ferdinand N. Clark out of his just and equitable dues and rights, and deprive him of the benefits of said award, did conspire and confederate together in the manner and for the purpose set forth in said Bill, this suit cannot be maintained:

1. Because the decision of said case turned upon no fact or proof witheld from or put into said case by the counsel of said F. N. Clark or by any other person; but upon the record of his doings or misdoings in his case in bankruptcy, facts and records which he has neither denied, nor attempted to disprove.

2. Because John Lilley, David Barclay and Matthew B. Vennard, Charles Staunton, Benjamin G. Davenport, William E. Pickersgill, Eb'r W. Stone, Homer Dickson, Joan de la Camera, John G. Bailey, Stephen D. Glover and Jas. McMurray and Stephen E. Glover, each of whose names as creditors, the said Ferdinand N. Clark inserted in his list of Creditors, in his petition to be declared a bankrupt, and whose proved debts amount to $72,405.24, the validity of which said F. N. Clark does not dispute, and neither of whom is accused of any fraud, are in effect the parties against whom this suit is brought, and who are to lose their undisputed share of this fund if this suit prevails.

And I submit that they are well entitled to hold their several and respective portions of this fund, even if B. C. Clark by the means of his own fraud or that of J. H. Stewart obtained judgment against said F. N. Clark, nearly twenty years ago, and which said F. N. Clark has allowed

hitherto to remain unreversed and without attempts to reverse. And even if Wm. H. Y. Hackett was appointed assignee upon the recommendation of persons who really were not creditors of said bankrupt. But who in point of fact then were, and ever since have been judgment creditors.

3. Because Ferdinand N. Clark having been adjudged guilty of fraud in his proceedings in his said bankruptcy, can take nothing under the pretended sale from R. M. Clark to him and his only interest in and claim to the fund is subject to the paramount rights of his creditors and can be protected only in the District Court. Such being the position of the Complainant, a Court of Equity can afford him no relief.

4. Because it appears from the records that the amount of the fund received by the Assignee and in the possession of the District Court is less than the amount of undisputed debts against said Clark in bankruptcy which have been duly proved.

5. Because a Court of Equity will not entertain the charges of Clark that others have committed fraud in regard to this fund, until he is purged of his own fraud in reference to it.

IV. But the facts, material or immaterial, which are relied upon by the Complainant are contradicted in and by the Defendants' answer, and are unsupported by Complainants' proof. These facts are:

1. It is alleged in said Bill that John Palmer, former Assignee of said F. N. Clark, was decreed a license to sell, and did sell said Clark's claim against the Republic of Mexico, at Public Auction, to one R. M. Clark for two

dollars, and that she thereupon for a valuable consideration transferred the same to the Complainant.

The answer expressly denies that said Palmer ever had any license to sell said claim or that anything passed by said pretended sale, or that said claim of said bankrupt against the Mexican Republic was included in said schedule marked "A" annexed to the petition of and referred to in the license to, said Palmer Assignee; or that said Palmer was in any wise authorized by said District Court to sell at Public Auction or otherwise said claim against said Republic of Mexico. [vide Defendants' answer—printed pp. 18 & 19 et 43—45 of printed record CLARK v. CLARK *and* HACKETT, Circuit Court, United States, District of Columbia.

The Defendant says that on the 22d of March. A. D. 1843, the said F. N. Clark upon his own petition was decreed a bankrupt and that *ipso facto* all the said F. N. Clark's property and rights of property in said claim against the Republic of Mexico became vested in said Palmer as his Assignee and subsequently in this Defendant, said Palmer's successor, as Assignee, and that from that day to this the said F. N. Clark has had no legal title or interest in or to said claim against said Republic of Mexico, or the award made thereon or the money arising therefrom; so that independently of said F. N. Clark's fraud, on account of which the Supreme Court of the United States decided that said fund in dispute belonged to his Assignee, the answer alleges and the record proves that said claim against the Republic of Mexico was not included in the license to said Palmer Assignee, and that said Palmer had no authority to sell the same, so that aside from and independent of

said F. N. Clark's adjudged fraud this pretended sale must be held to have been entirely without authority and void, and this suit must fail because the Complainant is shown by the record to have no interest in the subject matter which he seeks to litigate.

And this answer is not attempted to be controlled by evidence, nor can it be contradicted, for the answer is based upon and controlled by the record in the case Clark v. Clark and Hackett, U. S. Circuit Court, which is made a part of the Defendants' answer, from which it appears that John Palmer Assignee had no license to sell, and the Complainant consequently had no capacity to purchase, said claim against the Republic of Mexico, for which the fund in controversy was paid.

2. The next matter alleged in the Bill and denied in the answer is the charging B. C. Clark's judgment for more than $20,000, to have been obtained in 1842 by fraud and the said claim of B. C. Clark and Company to be unfounded and that said B. C. Clark on the 15th day of May 1851 was a debtor of said Complainant. In the answer these charges all and singular are separately denied.

And the Complainants' evidence does not even tend to show that any one of said charges is well founded. The result then is :—

(1.) That the validity of that judgment cannot be considered by this Court in this suit.

(2.) That if the examination of that judgment lay within the scope of the duties and powers of this Court in this suit, that judgment must be pronounced valid.

(3.) If such judgment were fraudulent and adjudged to

be invalid for the fraud of B. C. Clark and J. H. Stewart, one or both, that result would not prove or tend to prove that the Complainants' suit could or should be maintained.

3. The next charge in the bill is, that the said F. N. Clark "is informed and verily believes solely for the reason that your orator would not allow said Charles H. Dougherty and said Michæl Dougherty their claims as aforesaid, they, the said Charles H. Dougherty and the said Michæl Dougherty and the said J. Hopkins Stewart and one John L. Hayes of the city of Washington and District of Columbia, Attorney at Law, and afterwards the Counsellor of your orator, and the said William H. Y. Hackett, intending and combining to defraud your orator out of his just and equitable dues and rights, and deprive him of the benefits of said award, conspired and confederated together, etc." 12th printed pp. Complainants' Bill. Now there are two answers to this part of the Bill.

(1.) It is of no importance if the charge is proved.

(2.) The charge is as destitute of truth as it is of importance.

First. If the said Hayes, Doughertys, Stewart, and Hackett confederated and conspired, etc. as is alleged in the Complainants' Bill, their so doing furnishes no ground, legal or equitable, for sustaining a suit wherein F. N. Clark seeks to recover or withhold a fund, which the Supreme Court of the United States have decided he cannot hold by reason of his own fraud, from creditors, who are accused of no fraud, and whose duly proved and undisputed debts amount to more than the fund.

Even if said alleged conspirators, none of whom were or claimed to be creditors of said F. N. Clark, had had the bad taste to seek the gratuitous degradation of confederating against a fraudulent bankrupt to obtain for others a fund so tainted with fraud that he could not hold it, their conduct would neither purge Clark's fraud nor so taint the rights of the *bona fide* and innocent creditors as to furnish any ground for the support of this suit; would neither confer upon him the right to claim nor impose upon them the obligation to surrender, a fund which has been adjudged to belong to them by the Supreme Court of the United States,

This suit is nominally against William H. Y. Hackett. but is practically a suit of a bankrupt against his own creditors to recover back money which honestly belongs to them, and which was long since awarded to them by the law and the courts. And for the purpose of this trial this fund should be regarded as if it were already in the pockets of Clark's creditors according to their respective claims. If Clark could not recover this money from his creditors, if it were now in their pockets according to the provisions of the Bankrupt Act, he cannot prevail in this suit against the Assignee, for the Assignee is merely their agent and cannot now be held to refund this money unless his principals would be liable to refund it, were it distributed to them.

SECOND.—But this charge is proved to be as false as it is futile.

(1.)—By its intrinsic absurdity. Men do not commit wrongs without motives. Mr. Hayes, one of the alleged conspirators was not the sole counsel of the complainant and did not have entire control of his suit. The record

shows that the Hon. Rufus Choate, Joseph M. Bell, Mr. Bradley, of Washington, and the Hon. Mr. Nelson, late Attorney General of the United States, were associated with him as counsel for Clark in said suit. Besides, it further appears from the record that Mr. Hayes' compensation was to depend upon his success. To say nothing of professional honor—and it is attacked with an ill grace by one who has been adjudged a fraudulent bankrupt—Mr. Hayes' interest as well as his duty was on the side of Clark, and to pretend that any case entrusted to the above named gentleman was lost through want of fidelity or want or ability, would be as absurd as to pretend that Clark upon the record had any case to lose; or that any counsel, whatever might have been their merits or deficiencies, could in that suit have done him either good or harm. Besides, the Doughertys, if they have in any way aided in producing the result complained of, have taken the most effectual method to defeat the collection of their debts, by depriving Clark of his only means of paying them. But it should be borne in mind that they have neither proved nor attempted to prove a joint or separate debt against said Clark, nor have they set up any claim to this fund or any part of it.

(2.) This charge in all its shapes and phases has been denied by the Defendant under oath.

(3.) So far from there being any proof of this charge, there is no evidence competent to be considered, which proves or tends to prove a fact or circumstance of a suspicious character. The only fraud which the evidence on the record proves is that of the complainant. Now my position is this:—Even if the charge against B. C. Clark, John L. Hayes, J. Hopkins Stewart, Michæl Dougherty,

Charles H. Dougherty, John Clark, Charles G. Nazro and William H. Y. Hackett, or any, all or either of them, were true and proved, yet this suit cannot be maintained because whatever be the form, this suit is in substance for the benefit of F. N. Clark against John Lilley, David Barclay, M. B. Vennard, Charles Staunton, B. G. Davenport, W. G. Pickersgill, B. H. Dixen, Joan de la Camera, John G. Bailey Stephen D. Glover, James McMurray, and Stephen G. Glover, creditors of said F. N. Clark, who are accused of no fraud, and whose proved and undenied debts amount to more than the fund. This fund is now to be treated as it it were in the hands of bona fide creditors duly distributed according to law. For it ought, and but for the numerous and groundless suits against the Assignee, it would have been there five years ago. The Court simply holds this fund in trust for creditors. The question then is—shall these creditors who have done no wrong be compelled to give up their property to their debtor who is a fraudulent bankrupt? The conduct of the defendant who is a mere agent by whom the District Court acts in performing a portion of its functions, and the acts of his confederates, however otherwise reprehensible, can be of no importance in connection with this case, if that conduct and those acts did not in any wise influence the decision of the suit in the Supreme Court of the United States. If that decision was made aside from and independent of the efforts of the Defendant and his confederates, if the decision of the last named suit turned on the fraud of F. N. Clark, proved by his own conduct, as he himself has put it on record, he has and can have no status in a Court of Equity until he he is purged of this ineffaceable fraud.

V. The Complainant has heretofore commenced a suit in Equity against this Defendant and others, the same whom he now prays if they come within the jurisdiction of this Court, may be made parties to this suit; and the former suit has been dismissed, and that dismissal was not expressed to be without prejudice. This fact is set out in answer to the Complainant's bill in this suit, and is a good defense to it.

2 Story's Eq. Commentaries, pp. 739, Sect. 1523.

VI. This is in substance if not in form a bill of review.—Its object is to review and reverse a decision of the Supreme Court of the United States. There is no allegation of fraud which has been discovered since the other suit was decided. If it be an original bill in form, it is not such in substance and will not be in effect. Although in a different circuit it is really a bill of review, and cannot be sustained unless brought in accordance with leave of the Supreme Court of the United States to that effect.

Southard vs. Russell 16, Howard 547.

I. This suit is barred by the statute of limitations.

II. The former Assignee, Jno. Palmer, under whom F. N. Clark, claims, at no time had a license to sell the claim against the Republic of Mexico.

III. Every material allegation in the Complainant's Bill is denied, under oath, by the Defendant and neither of them is supported by the Complainant's proof.

IV. The original suit in the Circuit Court of the U. S. for the District of Columbia having turned upon the fraudulent conduct of F. N. Clark in regard to this fund in bankruptcy and the Supreme Court of the U. S. having upon appeal, affirmed that decision, Clark can have no *Status* as a party plff. in regard to this fund in a Court of Equity.

V. Even if the allegations in the Bill were true, Clark would be entitled to no relief in Equity against innocent and *bona fide* creditors.

VI. A suit for the same alleged cause, and between the same parties, before bringing this suit, had been heard and defeated in the first Circuit.

VII. This is substantially a suit to review and reverse a decision of the Supreme Court of the United States.

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OPINION

OF THE

CIRCUIT COURT,

DELIVERED BY

HON. NATHAN CLIFFORD,

ONE OF THE JUSTICES

OF THE

SUPREME COURT OF THE UNITED STATES,

IN THIS SUIT OF

FERDINAND N. CLARK

AGAINST

WILLIAM H. Y. HACKETT.

605.

THE U. S. CIRCUIT COURT,

NEW-HAMPSHIRE DISTRICT:

OCTOBER TERM, 1859.

Ferdinand N. Clark v. William H. Y. Hackett.

CLIFFORD, J.

This is a bill in equity against the respondent, wherein the complainant seeks to set aside and annul a certain decree of the Supreme Court of the United States, affirming on appeal a certain decree of the Circuit Court of the United States for the District of Columbia, and also to set aside and annul the aforesaid decree of the Circuit Court so appealed and affirmed. Those decrees were made in a suit in equity in which one Benjamin C. Clark and the present respondent were complainants, and the same Ferdinand N. Clark, then known and called Ferdinand Clark, was respondent. That case as tried in the Supreme Court is fully reported in the published decisions of the court, and will be first considered as the necessary foundation of the present bill of complaint [Ferdinand Clark v Benjamin C. Clark et al, 17 How. 315.] It appears by the report in that case that the complainant in this suit prosecuted a claim against the republic of Mexico for the unlawful seizure of the cargo of the schooner Louisiana, and that there was awarded

to him therefor the sum of $86,785.29, by the commissioners appointed under the late treaty with that Republic. According to the report in that case some twenty per cent. of the sum awarded was deducted by agreement as compensation to the agents employed in its recovery, leaving the sum of $69,429.04 as the amount in controversy in that suit. That award was made on the 15th day of April, 1851, and on the 15th day of May following, Benjamin C. Clark, of Boston, filed a creditor's bill in the Circuit Court of the United States for the District of Columbia, claiming the fund for himself and other creditors of the respondent, who had taken the benefit of the bankrupt law of the United States on the 27th day of March, 1843, in the District Court of the United States for the district of New Hampshire. On the 30th day of May, 1851, shortly after that bill was filed, William H. Y. Hackett, the respondent in this suit, the then assignee in bankruptcy of the respondent in that suit, filed his bill in that court also claiming the entire fund for the distribution among the creditors of the bankrupt, alleging the decree of the original assignee in bankruptcy, and setting up his own appointment to that place. In that bill the complainant, who is the present respondent, set forth his own appointment as assignee, in the place of John Palmer, deceased, and prayed for leave to come in under the prayer of the original bill, and to be made the complainant in that suit. He then averred that the respondent, who is now the present complainant, was duly and regularly declared a bankrupt in 1843, and that all his property and effects passed out of the bankrupt and rested in the assignee, who was regularly appointed and had since deceased, leaving the proceedings in bankruptcy still pending, that the bankrupt had a claim on the republic of Mexico among his assets which was the claim in satis-

faction of which the award was made, that the claim was not described in any manner to make it available to his creditors, and that no such evidences as would enable the assignee to recover the claim were put into his hands, leaving the assignee ignorant of the true value of the assets, and that the assignee therefore reported them to the court as of no value, that no right title or interest in the claim ever passed out of the assignee or became revested in the bankrupt, that the bankrupt had since prosecuted the claim in his own right, falsely and fraudulently claiming that his own debts in bankruptcy had been satisfied, and that the claim had been revested in him, and finally the complainant in that suit alleged that the amount of the award legally belonged to him as the assignee of the bankrupt estate. Whereupon he prayed for an injunction under the eighth section of the act of Congress of the third of March, 1849, and for general relief. In his answer the respondent in that suit admitted that he had among his assets in bankruptcy a claim against the Republic of Mexico, and that the claim on which the award of the commissioners was made was the same, but denied that it was not described in the schedule so as to make it available to his creditors; and he expressly and particularly denied that such evidences and information as would have enabled the assignee to recover the claim, were fraudulently withheld by him, or that his assets and effects were generally so described in his schedules that the assignee was in ignorance of their true value. On the contrary, he averred that this claim was expressly mentioned in the schedule in the manner demanded by the rules and practice in the District Court, and that it was particularly mentioned as subject to a mortgage then existing, and expressed the opinion that the mortgage was for a sum greater than the value of the

claim, and as a further explanation he alleged that no value was set to the claim, for the reason that he then believed and had reason to believe that it was wholly without value. Further answering, the respondent alleged in that suit that he communicated to the assignee the situation of all the claims mentioned in his schedules, that all the papers and evidences in support of the claims were not in his possession, but had been in the year 1842 or earlier, publicly filed before the commissioners under the convention of the 11th of April, 1839, and were afterwards placed in the public archives of the government, and there remained until the time of the award. He then set forth more particularly the proceedings in the bankrupt court up to his discharge on the seventeenth day of December, 1844, from all the debts then owed by him, alleging that notice was duly published, and that no creditor ever filed proof of any debt or any objections to the proceedings or to the doings of the assignee till after the award was made. The answer then avers that on the fourteenth day of March, 1845, the assignee filed a petition to sell the estate mentioned and described in his schedules, and that it was so awarded by the Court on the same day; that in pursuance of the order so made, the assignee did, on the ninth day of April, 1845, after posting up advertisements, sell at public auction all of the estate and demands of the bankrupt mentioned in the schedules to R. M. Clark, averring that by such sale this claim passed to the said R. M. Clark, and denying at the same time all artifice or fraud to depress the value of the demands, and particularly all artifice or fraud to depress the value of this claim. In order to show a complete title in himself, he then alleged that on the ninth day of April, 1845, the assignee executed a formal bill of sale with schedules attached in which this claim was included, and that he

on the day following, for a valuable consideration purchased from R. M. Clark all the estate and demands so sold including this claim, and that he afterwards prosecuted this claim in his own name and at his own risk and expense. Other grounds of defence were also set up in the answer which it is not important to notice, as it is not claimed that this court possesses any jurisdiction to review the controversy upon its merits. On the second day of June, 1851, the Circuit Court of the United States for the District of Columbia, issued an injunction, restraining the secretary of the treasury from paying the amount of the fund, and the respondent from receiving it until the further order of the Court. Testimony was taken on both sides, and on the thirtieth day of May, 1853, the Circuit Court decreed that the fund should be paid over to William H. Y. Hackett as such assignee for distribution, according to law, among the creditors of the respondent. From that decree the respondent appealed to the Supreme Court of the United States, and at the December term, 1854, the cause came on for hearing, and after argument by eminent counsel, the Supreme Court unanimously affirmed the decree of the Circuit Court. Several questions were discussed at the bar and considered by the court. Those most directly involved in the pleadings were, whether the sale of this claim to R. M. Clark and the subsequent purchase of the same by the respondent on the following day were valid. These were alleged to be fraudulent in the bill and set up as valid in the answer, and it was expressly determined by the Supreme Court that they were fraudulent and invalid. Whereupon the decree of the Circuit Court for the District of Columbia ordering the fund to be paid over to the complainant's assignee for distribution among the creditors of the respondent was affirmed. Both the Circuit Court and

the Supreme Court in their respective spheres of judicial action had undoubted jurisdiction of the cause and the parties, and their determination of the matter is final and conclusive, unless it be shown in due form of law that the respective decrees of the Supreme Court and Circuit Court were procured by the fraud of the complainant in that suit. Circuit Courts have no jurisdiction to review the judgments or decrees of the Supreme Court in any case; and a Circuit Court for one circuit is equally destitute of authority to review, or in any manner to revise the judgments or decrees rendered or passed by a Circuit Court for another circuit. They can only be reviewed on a writ of error or on appeal to the Supreme Court. Such obvious truths need only to be stated in order to command universal assent as self evident propositions, so much so that any attempt to fortify them by argument or authority would be quite out of place. It is not upon any such grounds that the complainant in this suit seeks redress for his alleged wrongs. The charge against the respondent is, that the respective decrees pronounced in that suit were procured by fraud as alleged in the bill; and it is upon this ground alone that he prays that they may be set aside and annulled. Some reference now becomes necessary to the pleadings in this suit in order that the causes of complaint and their nature may become more fully understood. According to the allegations of the bill, the complainant filed his petition in bankruptcy on the twenty-eighth day of January, 1843, and was declared bankrupt on the twenty-second day of March following. And on the seventh day of December, 1844, a decree of the District Court was passed, discharging him from the debts he owed in his private right at the time of presenting his petition. On the twenty-second day

of March, 1843, John Palmer was appointed assignee of his property, rights and credits, and on the fourteenth day of March, 1845, the District Court decreed a license to the assignee to sell the assets of the bankrupt; and on the ninth day of April in the same year the assignee sold all his assets at public auction to one R. M. Clark for the sum of two dollars; and on the fourteenth day the complainant purchased the same under a formal and sufficient bill of sale from the auction vendee for a valuable consideration. Among those assets so purchased as the complainant alleges, was a certain claim against the Republic of Mexico for the unlawful seizure of the cargo of the schooner Louisiana, for which claim he admits the commissioners, under the treaty aforesaid, awarded him the sum of $86,786.29, payable from the Treasury of the United States on the fifteenth day of May, 1851. He then alleged that one Benjamin C. Clark, of Boston, falsely claiming to be one of his creditors by virtue of a certain pretended judgment, did on the fifteenth day of May, 1851, petition by bill the Circuit Court of the United States for the District of Columbia for an injunction to restrain the Secretary of the Treasury from paying him the fund until the further order of the Court. That judgment, which is particularly described in the bill he alleges, was obtained against him by the fraud and collusion of the attorney employed to defend the suit, and therefore he avers that it is void. B. C. Clark, in his bill before mentioned, prayed that the then assignee or such other as should be appointed, might come in under the prayer of the original bill, and be made the party complainant in that cause. In that connection the complainant in this suit alleges that one Charles G. Nazro, the copartner of Benja-

min C. Clark, falsely pretending that the copartners were creditors of his estate in bankruptcy, on the ninteenth day of May, 1851, petitioned the District Court of the United States for the district of New Hampshire for the appointment of an assignee instead of John Palmer, deceased, praying that the respondent in this suit, or some other person, might be appointed as such assignee, and falsely representing at the same time that John Palmer left assets unsold, and recent circumstances had given them value; and that the District Court on the same day decreed that the respondent be appointed assignee for the purpose prayed in the petition. Upon receiving that appointment as assignee, the complainant alleges that the respondent, on leave granted by the Circuit Court of the United States for the District of Columbia, was made complainant in that cause under the prayer of the original bill filed by Benjamin C. Clark, and that such proceedings were had in that suit so prosecuted by the respondent, that on the twenty-eighth day of March, 1853, the said Circuit Court did decree that the fund, less twenty per cent. paid to the agents who prosecuted the claim, be paid over to the respondent as such assignee, to be by him distributed among the creditors of the complainant. He further alleges that he appealed from the decree of the Circuit Court to the Supreme Court of the United States, and that such proceedings were had in the Supreme Court that the decree of the Circuit Court was affirmed. That fund was then received by the District Court of the United States for the district of New Hampshire as the complainant alleges, and still remains in its custody under that decree. Such is the substance of the stating part of the bill. Cer-

tain denials are then made by the complainant, which it becomes important to notice. He denies that he owed the judgment in favour of B. C. Clark or any part of the same, since the filing of his petition to be declared a bankrupt, and repeated the allegation that it was obtained by fraud and collusion. He also denies that any debt was due to Nazro & Clark on the twenty-eighth day of January, 1851. On the contrary he avers that they were indebted to him, and he also denies that John Palmer, as assignee, left unsold any of the assets, but avers that he closed and ended all the business appertaining thereto on the ninth day of April, 1845. His theory is that all the proceedings in bankruptcy were closed by the original assignee; and he accordingly alleges that the respondent was not authorized to set aside the proceedings of the former assignee, and in so doing that he exceeded the authority of the Court; and being deceived by the false representations of others, misrepresented the facts to the Circuit Court of the United States for the District of Columbia, and to the Supreme Court, by which false misrepresentations, and by the fraud and collusion of his own counsel, both Courts not knowing the real facts, were induced to decree, and did decree, that the fund should be paid over to the respondent. That claim, as he alleges, was considered valueless at the date of his petition to be declared a bankrupt, and continued to be so considered up to the time of its sale by the original assignee, and would not have been allowed by the commissioners but for his great skill and effort in prosecuting it, wherefore he claimed that he was equitably entitled to the whole amount. He then sets forth the evidences on which he relies to show that the judgment of B. C. Clark,

described in his creditor's bill, was obtained by fraud and collusion. They consist chiefly of the alleged fraudulent and collusive conduct of the attorney employed by him to defend the suit in which the judgment was rendered. According to the allegations of the bill his attorney was seasonably employed, duly instructed how to prepare and conduct the defence, and well knew that the complainant was ready and willing to aid and assist when called on for that purpose; and yet, as he alleges, his attorney fraudulently colluded and conspired with the plaintiff in that suit and others in his interest, and fraudulently abandoned the defence, so that he was defaulted. These matters, he admits, were not pleaded in defence in the Circuit Court of the United States for the District of Columbia, and the reasons why they were not, he alleges to be that he was fraudulently instructed by his counsel that the proceedings in bankruptcy, together with the sale of the assets by the original assignee, were a perfect and complete bar to that suit. Other minor matters are then set forth as showing the motive of some of the parties implicated, or the inducement which prompted them to aid in procuring the appointment of the respondent as assignee. On this point he alleges that Charles H. Dougherty and Michæl Dougherty, respectively, claimed certain portions of the fund on account of services alleged to have been rendered in getting it allowed, which he refused to admit, and that the latter said if he did not comply he would tie up the fund in Washington so that the complainant would not get any part of the award. Prompted solely by the reason that he refused to allow those claims, the complainant charges that Charles H. Dougherty and Michæl Dougherty and Joseph Hopkins

Stewart and one John L. Hayes, afterward his counsel, and the respondent, intending and combining to defraud the complainant out of his just rights, and to deprive him of the benefits of the award, conspired and confederated together; and as the means of the final consummation of their designs, caused the proceedings before mentioned to be instituted in the District Court of the United States for the district of New Hampshire, and by misrepresentation fraudulently induced that Court to appoint the respondent assignee; and as a further means of consummating their designs, caused the original proceedings to be commenced in the Circuit Court of the United States for the District of Columbia, and also caused the respondent to present his bill in that Court and become a party complainant in that cause. As a more effectual means of accomplishing their designs, he alleges that one of them offered his professional services to him to act for him in the conduct and management of his defence; and that being ignorant of their purposes, he did retain and employ him to prepare and conduct his defence, but that he so aided and assisted the adverse party by keeping out material matters of defence contrary to his instructions, that the court decreed the case against him, and granted the prayer of the bill. After stating in detail the several evidences so withheld, and specifying the several fraudulent acts, omissions and conspiracies of his counsel in preparing and conducting his defence, he avers that he was ignorant of all those fraudulent acts, omissions and conspiracies of the parties named, until after the decree of the Supreme Court affirming the decree of the Circuit, and until after the final decree. Wherefore he prays that the decree of the Supreme Court affirming the decree of

the Circuit Court, and the decree of the Circuit Court ordering the fund to be paid to the respondent as assignee, and enjoining the Secretary of the Treasury from paying the same to the complainant, may be set aside and annulled and for other relief. On the fifteenth day of August, 1857, the respondent appeared and filed his answer. Having already determined that this Court possesses no jurisdiction to review the decree either of the Supreme Court or of the Circuit Court, it will only be necessary to refer to such portions of the answer as are responsive to the charge of fraud and collusion as set forth in the bill. Those allegations of the bill can only affect the respondent in this suit, and no one of the other persons implicated in the suggestions of fraud has become, or in any manner been made a party to this proceeding. Separate denials are introduced into the answer to each distinct charge of fraud. They are full, clear and explicit; and in respect to each subject matter embraced in the bill, are as comprehensive as the charge. Actual fraud, when charged as in this case, is of course issuable; and as in all other cases where it is directly imputed, the burden of proof lies on the party who seeks to set aside the proceedings. Stronger evidence may not be required to satisfy the Court of the truth of a fact, irrespective of the effect of the answer in cases of fraud, than in other issuable matters in controversy, whether at law or in equity; but the fraud must be established by fair and reasonable inferences, to be drawn from the facts proved; and unless it is so established, the case fails and the transaction rests unimpaired. [Askam v. Barker 19 Eng. tr. & Eq. R. 529.] Charges of actual fraud unsupported by evidence showing the truth of the imputations,

if denied by the answer, are of no avail, for the plain reason that fraud is not to be presumed in any case without proof; and he who makes the charge has the burden of proof to establish the imputation. Superadded to that general rule, which is applicable in all cases, whether at law or in equity, is another, equally salutary, which is peculiar to hearings in equity upon bill and answer, and that is when the charge as made in the bill is positively denied in the answer, a decree cannot be pronounced for the complainant on the testimony of a single witness, without some corroboration either from the testimony of other witnesses, or from the circumstances proved in the case. In equity the established rule is, that an answer which is responsive to the allegations and charges made in the bill, and contains clear and positive denials thereof, must prevail unless it is overcome by the testimony of two witnesses to the substantial facts, or at least by one witness and such attendant circumstances as will supply the want of another witness and thus control the statements of the answer or show its incredibility or insufficiency as evidence. [3 Green 1 Ev. sec. 289, Daniel v. Mitchel 1 Story C. C. R. 188. Hughes v. Blake 6 Whea. 453 Lenox v. Prout 3 Whea. 520.] Separate denials to each and every charge of fraud as made in the bill, are contained in the answer, and in language as clear, positive and explicit as could well be chosen; and in addition thereto the respondent declared that he wholly denies that he has at any time for the purposes set forth in the bill, or for any purpose conspired or confederated with the persons therein named, or any or either of them, to consummate any design in respect to the complainant, or the award, or any matter or thing charged in the bill.

That denial is repeated and enlarged when the respondent says he wholly denies that he has confederated, conspired or combined with any person or persons whether named or not named in the bill, in any way to defraud, injure or prejudice him, or to deprive him of the award or any part thereof, or to influence the conduct of any person or persons retained or to be retained as counsel for the complainant in any or either of the suits mentioned, or in any other matter whatsoever. These references to the bill and answer are sufficient to show what the state of the pleadings is in the particular under consideration; and the result is that the burden of proving the charges of fraud against the respondent as made in the bill is upon the complainant, according to the rule of law already laid down. Without repeating the charges of fraud as alleged in the bill, it will be sufficient to say that so far as the respondent in this suit is concerned, not one of them is made out by any testimony in the case. Seven witnesses were examined by the complainant, and after a careful perusal of their depositions, it is not perceived that there is anything in their statements, or the exhibits accompanying the same, which has any tendency to show either that the decree of the Circuit Court of the United States for the District of Columbia, or the decree of the Supreme Court affirming the same, was procured by or through any fraud practiced by the respondent.

This conclusion renders it unnecessary to enter upon a separate considertion of the several propositions assumed by the counsel of the complainant on this branch of the case, as the answer already given applies to them all, and as their separate examination would only serve to protract

this investigation without accomplishing anything particularly beneficial to either party, it will be omitted. Recurring to the pleadings in this suit, there is not alleged in the bill so much as one fact deemed material to the decision of the controversy in its present stage which is not directly met by the respondent, and emphatically denied in the answer. Such positive denials in the answer, inasmuch as they are directly responsive to the charging part of the bill imputing actual fraud, must be considered by every rule of equity pleading as an insuperable barrier to any recovery by the complainant unless those denials are overcome by competent and sufficient evidence. [Eyre et al v. Potter 15 How. 56, Price v. Berrington 7 Eng. tr. & Eq. R. 254.] No such evidence has been exhibited by the complainant, and as this Court has no power to grant relief under the circumstances of this case except upon fraud, the prayer of the bill must be denied.

II. Another ground of defense assumed by the respondent deserves to be considered for the reason that if tenable it furnishes a complete answer to the suit, not only in its present form but in any form in which it may hereafter be brought. By the eighth section of the Bankrupt Act, of the nineteenth of August, 1841, it is among other things provided that no suit at law or in equity shall in any case be maintainable by or against such assignee, or by or against any person claiming an adverse interest touching the property and rights of property aforesaid, in any Court whatever, unless the same shall be brought within two years after the declaration and decree in bankruptcy, or after the cause of suit shall have first accrued. Assuming the facts to be true as they are stated and charged in this

bill of complaint, the cause of action in this suit accrued at the time when the complainant became possessed of the knowledge of the fraudulent acts, omissions and conspiracies whereby the persons named in the bill procured the respective decrees which he now seeks to have set aside and annulled. In his bill the complainant alleges that he was ignorant of those fraudulent acts, omissions, and conspiracies, until after the decree of the Supreme Court affirming the decree of the Circuit Court, and until after the final decree. It is conceded by the counsel on both sides that the decree of the Supreme Court affirming the decree of the Circuit Court went into operation as early as the seventh day of May, 1855. On that day the fund was paid over to the District Court of the United States for the District of New Hampshire, under the final decree of the Circuit Court of the United States, as affirmed by the Supreme Court, and it is admitted in argument by the counsel for the complainant that the limitation, if it applies at all, commences to run from that date. Payment of the fund could not have been made until after the final decree of the Circuit Court, and the bill in effect admits that after the final decree, the complainant became informed of the fraudulent acts, omissions and conspiracies whereby those respective decrees had been procured. It is clear, therefore, that the limitation commenced as early as the seventh day of May, 1855, when the fund was paid over to the Bankrupt Court for distribution among the creditors of the complainant. As appears by the record, the bill in this suit was filed on the nineteenth day of June, 1857, more than two years after the cause of action accrued.

Three propositions are assumed by the counsel for the complainant in answer to this ground of defense. In the first place they insist, in effect, that so much of the answer as sets up this limitation as a bar to the suit is not properly before the Court. No such defense was set up in the answer as originally filed on the fifteenth day of August, 1857. A motion to amend the answer in this particular was made at the October term, 1858, and the amended answer was filed on the first day of March following, which was duly allowed in Court on the sixteenth day of the same month. That motion was addressed to the discretion of the Court, and being one which it was competent for the Court to allow, it must be considered that it was duly and properly allowed. In the amended answer, the respondent set up the limitation in the act of Congress before mentioned, and claims the same benefit of the provision as if he had pleaded the same, and the only question is whether it constitutes a bar to the suit.

2. It is insisted by the counsel for the complainant that it is not a bar, because the respondent is not now, and was not at the time the decrees were pronounced, the legal assignee of his bankrupt estate. Their argument on this point assumes that his appointment was procured by fraudulent misrepresentations as charged in the bill. It overlooks the important and controlling fact that all these charges of fraudulent misrepresentations as made in the bill are particularly and emphatically denied in the answer, and being unsupported by any sufficient proof, cannot avail. In the absence of competent and sufficient proof to sustain the allegations of fraud when thus denied, it must

be assumed on the principles already explained, that the appointment was legally and properly made, and if so then it is obvious that the proposition cannot be maintained.

3. One other branch of the argument only remains to be considered, and in respect to this last proposition, a few words will be sufficient. It is insisted that the present bill is no more than an amendment to an original bill filed in this Court on the eighteenth day of March, 1856, which was subsequently dismissed by the Court. Regarding the proposition as directly contradictory to the record in this suit, it cannot be sustained. As already remarked, this bill was filed in Court on the thirtieth day of June, 1857, and is in theory and fact an original bill, as fully and clearly appears by the record which cannot be contradicted. [King v. Robinson 33 Me. & cases cited.] Suits, whether at law or in equity, against an assignee in bankruptcy, under the act of Congress of the nineteenth day of August, 1841, by any person claiming an adverse interest touching the property or rights of property of the bankrupt's estate, must be brought within two years after the cause of action shall have first accrued, and if not so commenced within that time, that provision of the act of Congress, if well pleaded, constitutes a complete bar to the suit. This suit was not commenced within two years after the cause of action first accrued, and therefore is not maintainable. On both grounds I am of the opinion that the suit cannot be maintained, and the bill is hereby dismissed with costs.

THE DISTRICT OF NEW HAMPSHIRE, SS.

District Court of the United States: in the matter of Ferdinand Clark. In Bankruptcy.

William H. Y. Hackett, Esquire, the Assignee of said Clark, paid into the Registry of the Court here, as the assets of the estate of said Clark in Bankruptcy, the sum of sixty-eight thousand and seventy dollars and ten cents, on the fifth day of May, A. D. 1855, (one thousand eight hundred and fifty-five.)

A true certificate from the records of said
[L.S.] Court; as witness the seal of said Court this fifteenth day of November, A. D. 1860.

Attest, ALBERT R. HATCH, Clerk.

THE DISTRICT OF NEW HAMPSHIRE, SS.

Circuit Court of the United States. In Equity. Ferdinand N. Clark, complainant, vs. William H. Y. Hackett, defendant.

The Complainant's bill in equity in this case was filed in this Court on the thirteenth day of June, A. D. 1857, and was continued from term to term until the October Term, A. D. 1859, when the bill was dismissed by the Court. From the decree in said cause, the Complainant thereupon claimed an appeal at the Supreme Court of the United States at Washington. The appeal was allowed, and the Complainant filed the usual bond for costs on the seventeenth day of October, A. D. 1859.

A true certificate from the records; as witness
[L.S.] the seal of said Court this fifteenth day of November, A. D. 1860.

Attest, ALBERT R. HATCH, Clerk.